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FORCED MIGRATION review

Issue 50
September 2015

Dayton +20

Bosnia and Herzegovina twenty years on
from the Dayton Peace Agreement

plus articles on:
safe shelter, asylum
adjudication, assisted
voluntary return,
resettled refugees,
and the landscape
of protection

Dayton +20

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Front cover

Local musician Vedran Smailović – who became known as ‘the Cellist of Sarajevo’ – plays inside the partially destroyed National Library in Sarajevo during the Bosnian war. 12th September 1992.

Photo by Mikhail Evstafiev www.evstafiev.com

Vedran Smailović was a cellist in the Sarajevo String Quartet, the Sarajevo Opera, the Sarajevo Philharmonic Orchestra, the Symphony Orchestra RTV Sarajevo and the National Theatre of Sarajevo. He regularly played his cello in ruined buildings and at funerals during the siege of Sarajevo, frequently performing Albinoni's Adagio in G Minor. He left the city in 1993.

In April 2012, Smailović returned to Sarajevo, 20 years after the beginning of the war: <https://vimeo.com/39846516>.



Forced Migration Review

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From the editors

Twenty years on from the signing of the Dayton Peace Agreement in November 1995, the consequences of conflict – including the long-term effects of displacement – are still being felt in the Western Balkans.

This issue of FMR focuses largely on the question of return. Some of those who were driven from their homes have been unable to return; others have returned but have struggled to rebuild their lives. The Agreement may have brought an end to war but its implementation has not yet put an end to human suffering and social crisis.

As one of our authors says, "Twenty years on, the return project is ready for review." This is an appropriate moment to examine the particular case of people who were displaced from and within Bosnia and Herzegovina as a result of the 1992-95 war, and to reflect on the lessons that may be drawn from the successes and failures of the Dayton Peace Agreement. These lessons have resonance for current crises – such as in Syria or Ukraine – and merit attention.

We would like to thank Selma Porobic (Centre for Refugee and IDP Studies, University of Sarajevo) and Erin Mooney (United Nations Protection Capacity/ ProCap) for their assistance as advisors on the feature theme of this issue. We are also grateful to Catholic Relief Services-USCCB, the Swiss Federal Department of Foreign Affairs and UNHCR's Regional Bureau for Europe for their financial support.

FMR 50 also includes a number of '**general**' articles on: safe shelters for survivors of SGBV, inconsistencies in asylum appeal adjudication in the UK, assisted voluntary return of young Afghans, refugees' perspectives on successful resettlement in the US, and the fragmentation of the protection landscape. (Please note that all our 'general' articles are also now gathered together online, at www.fmreview.org/general-articles.)

The full issue and all the individual articles in this issue are online in html, pdf and audio formats at www.fmreview.org/dayton20. Please help disseminate this issue by circulating to networks, mentioning it on Twitter and Facebook and adding it to resources lists.

This issue (and its accompanying expanded contents summary) will be available online in English, Arabic, French, Spanish and Bosnian (both Latin and Cyrillic alphabets). However, due to shortage of funds, FMR 50 will be available **in print in English, Arabic and Bosnian only**.

Please email us at fmr@qeh.ox.ac.uk if you would like printed copies.

Forthcoming issues:

'Destination: Europe' – Due out December 2015. This issue will discuss the complexities of the European asylum debate, placing it in its broader context.
'Thinking ahead: displacement, transition and solutions' – Due out May 2016. For more details, see www.fmreview.org/forthcoming.

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Marion Couldrey and Maurice Herson
Editors, Forced Migration Review

Foreword: Addressing the legacy of violence

Valentin Inzko

The devastation orchestrated by political, military and paramilitary leaders a generation ago continues to exert a malicious influence on the Western Balkans region long after many of those responsible have been convicted for their crimes. Just as the legacy of rape, murder and genocide committed during the conflict has left the region deeply scarred, so has the ideology of ethno-territorial nationalism poisoned its societies.

This is the complex subject explored in this issue of *Forced Migration Review*. Contributions reflect lessons learned and insights gained from practitioner and researcher engagement in the Western Balkans over the last 20 years. This practice-oriented approach offers us a tool to be more effective in tackling the problems the international community faces in this region and beyond, and this is why this work has my strong support.

Combating ethnic division

In Bosnia and Herzegovina, the aim of creating ethnically homogeneous statelets was curbed at Dayton but the dominance of ethnic politics was not. In many ways it was entrenched. While the Dayton Peace Agreement explicitly provides for the return of all refugees and displaced persons to their pre-war homes and requires the authorities to uphold and facilitate this process, it also relies on the goodwill of authorities who often perceive their political interest to be in maintaining ethnic division.

Substantial numbers of people have exercised their right to return – it is important to remember this success. But it is also true that powerful elites have continued to resist the reintegration of the country, clearly acting outside the provisions of the constitutional settlement. Public officials – from municipal clerks to those in high office – have obstructed return. Indeed, in the decade after the war, High Representatives had to intervene

robustly to end this obstruction. But something else was also at play: an effort to cement ethnicity as a single social and political building block. This is a policy we must continue to push back on.

In many cases, those who have tried to consolidate the results of forced migration appear to believe that their efforts are principled. They have accepted the argument that people with different customs and beliefs cannot live peacefully together. They are wrong. Their vision, their narrative, runs counter to the conclusive evidence from other parts of the world that societies that encompass complex and intermingled identities **can** and **do** thrive. It also flies in the face of the historical record in Bosnia and Herzegovina, a society which for centuries was a model of successful – often fruitful – coexistence among different religions and cultural traditions.

I believe that the irrational acceptance of a principle of divisiveness underpins many of the problems discussed in the following pages. The forced migration – ‘ethnic cleansing’ – conducted in the Western Balkans during the 1990s has not been fully and universally understood as a moral as well as a political failure, and its legacy of suspicion and spite continues to frustrate efforts to reverse the demographic distortions created by violence. This core challenge is one that will need to be faced ever more directly in future.

Many of the people of Bosnia and Herzegovina, working with the active support of the international community, are determined to address this political challenge and we owe it to them and to the victims of the war and of course to future generations to continue to support them. It is a long hard struggle but one that, I am certain, will in the long term see reintegration triumph over division.

Valentin Inzko, High Representative to Bosnia and Herzegovina. For more information, please contact sarajevo.rd@ohr.int.

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The General Framework Agreement for Peace in Bosnia and Herzegovina

The General Framework Agreement, also known as the Dayton Accords, Dayton Peace Agreement, Paris Protocol or Dayton-Paris Agreement, is the peace agreement reached at Wright-Patterson Air Force Base near Dayton, Ohio, in the United States, in November 1995, and formally signed in Paris on 14 December 1995. This Agreement put an end to the Bosnian war that had started in April 1992.

The political divisions of Bosnia and Herzegovina (BiH) created by the Dayton Peace Agreement comprise two 'entities' – the Federation of BiH, with mostly Bosniaks and Croats as its 'constituent peoples', and the Republika Srpska, with mostly Serbs – plus, since 1999, Brčko District as a self-governing administrative unit under the sovereignty of BiH.

The text of the Agreement is online at www.ohr.int/dpa/default.asp?content_id=379



Annex 7: why are we still discussing it?

María del Pilar Valledor Álvarez

Annex 7 to the Dayton Peace Agreement was designed to address the displacement of 2.2 million people during the Bosnian war of 1992-95. Its job is not yet done.

The clash of separatist and ethnic interests in the Balkans led to a war that began in early 1992 and in which the use of violence against civilians shocked the world. It was during this conflict that the term 'ethnic cleansing' was coined to describe the use of torture, rape, indiscriminate killings, internment in prison camps and the expulsion of thousands of civilians from their homes and towns in order to achieve ethnic 'purity'. It is estimated that 263,000 people died and more than two million people – out of a pre-war population of 4.4 million – were displaced.

Of the displaced, about a million remained in the country and up to 1.2 million fled to other countries. Germany received some 350,000 refugees, Croatia about 300,000 and Austria 80,000, followed by Slovenia with more than 33,000 and Switzerland with almost 27,000. The Netherlands and Denmark took in some 23,000 refugees each, and the United Kingdom and Norway 12,000 and 13,000 respectively. Some 610,000 of the refugees were Bosniaks, 307,000 Bosnian Croats, 253,000 Bosnian Serbs and 23,000 others.

The Dayton Peace Agreement, signed on 21st November 1995, brought the war to an end.

Annex 7 to the Peace Agreement was designed to be key to the future stability of the region as it recognised the right of all displaced people to return to their homes of origin, or to receive compensation for property to which, for whatever reason, they could not return. Furthermore, the parties to the Agreement were required to implement a repatriation plan to be drawn up by the United Nations High Commissioner for Refugees. They had to commit to provide the necessary assistance and take the necessary political, economic and social measures to ensure the voluntary return of refugees and displaced persons. An independent commission, based in

Sarajevo, would be responsible for settling property and compensation claims. But four years of war had left a legacy of distrust that ended the hope that those who had been displaced would easily or readily return to live side by side in peace.

Continuing discrimination and displacement

This climate of mistrust and fear between different ethnic groups continued, and many refused to return home. Of those who did return, many suffered discrimination in trying to access the labour market or other public services such as health or education. The protection of returnees and their homes, especially in the case of minorities, was essential to ensure the initial success of the repatriation, and more active involvement of the multinational peacekeeping force (SFOR) deployed after the war could have been instrumental in increasing the number of returnees at this early stage. To all these difficulties was added the pressure on some European countries to repatriate hundreds of thousands of Bosnian refugees despite the shortage of funds to rebuild damaged homes, build new ones or finance compensation claims.

The limited success of the implementation of Annex 7 has its origin in the Dayton Peace Agreement itself, in the negotiators and signatories who entrusted the security of return of minorities to the same authorities who had ordered their ethnic cleansing during the war. The signing of the Peace Agreement ended the war but after twenty years thousands of people are still displaced and solutions to the legacy of the war are still needed.

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Political and social consequences of continuing displacement in Bosnia and Herzegovina

Lana Pašić

Twenty years after Dayton, failures to facilitate effective refugee and IDP return have had a social and political impact at both community and state level.

The 1990s wars in the Balkans triggered large-scale displacement within the region. Serbia, Montenegro and Croatia hosted about 40% of the refugees from Bosnia and Herzegovina (BiH), while Austria, Germany, Canada, the United States and Australia also received large numbers. One hundred thousand people died in the conflict and two million people – almost half the population of BiH – were displaced, one million of whom were internally displaced. Although the peace agreement signed in Dayton, Ohio, on 21 November 1995 made provision for the return of refugees and IDPs to their place of origin, 20 years on the impact of displacement still affects the social fabric, political context and economy of the country.

The first two years following the war saw large numbers of people returning from abroad – but mainly to the areas where their ethnic group was dominant (known as ‘majority returns’). ‘Minority returns’ – displaced people who would now be ethnically in the numerical minority in their areas of origin – only picked up in the early 2000s, and by the mid-2000s it was clear that most of the ‘returns’ were fictional. People returned and registered in their place of origin solely for the purpose of reclaiming and then selling their property, after which they moved back to areas where their ethnic group was in the majority. This was particularly clear in the case of Serbs in Sarajevo, who tended to re-settle in the predominantly Serb part of the city, which is part of the Republika Srpska.

Some of the displaced choose not to return because of past traumas and a continuing feeling of insecurity, others because of an absence of economic opportunities. Displaced populations often experience high rates of poverty and limited access

to social and health services. They may not be able to finance their return or the reconstruction of their pre-conflict homes; furthermore, finding a job and reintegrating into the economy where there already is a staggeringly high unemployment rate is particularly difficult for a person from a minority ethnic group. When returns occur, it is often the older and economically inactive population that moves back, which affects the dynamic of community life and in turn hampers the potential for economic activity and development in the area.

Refugee and IDP return is also likely to be discouraged by the nature of the restructured state whereby, for example, the education system is divided ethnically, following the majority ethnic curriculum for subjects such as history, language and religious studies. Finally, most of the IDPs, particularly the younger ones, have by now re-established their lives and livelihoods and have built social capital in new areas of residence, and no longer have connections with their place of origin or a desire to return there.

Political and social consequences

Bosnia and Herzegovina was ethnically the most mixed state in the former Yugoslavia, with a high degree of mutual respect, tolerance and coexistence. The displacement of large numbers of people during the conflict, however, caused **demographic changes** in the ethnic composition of towns and villages. Although Annex 7 of the Dayton Peace Agreement attempted to restore the multi-ethnic character of BiH, the ‘entity’ lines¹ followed war-time divisions and when the displaced populations did not, on the whole, return to their pre-war residence, ethnic homogeneity was further embedded. The result was the creation of



Sarajevo, 1996.

separate, almost mono-ethnic communities with little intermingling of the population.

These entity lines pose not only institutional and structural borders but also emotional and psychological barriers. Heterogeneous, mixed communities were the places of the most vicious fighting, and return to these areas has been slow and difficult. In cases where it has occurred, the high levels of **mistrust** and in some cases ethnic intolerance remain, with little potential for building strong and integrated communities.

In turn, mistrust, intolerance and lack of community-level integration have resulted in the failure of **reconciliation** efforts at both the community and national level. Even in cases where there have been minority returns, these did not necessarily facilitate the process of reconciliation; simply sharing living space does not imply that the ethnic groups have resolved the issues of the past and forgiven each other. And as people from different ethnic groups continue to live separately from each other, the divisions are being fomented and used by those promoting nationalist

politics and potential secession, generating renewed **political instability** in the country.

Although Annex 7 of the Dayton Peace Agreement created a legal and policy framework for the return of refugees and IDPs with the goal of re-building inter-ethnic trust and respect, the subsequent policies and approaches did not succeed in ensuring long-term returns and, with that, long-term stability and community building. Although the majority of the population of BiH simply wishes to see progress and better opportunities, the approach to refugee and IDP return has instead perpetuated political and economic instability by entrenching ethnic divisions. The absence of inter-ethnic community integration which could have happened through returns also resulted in missed opportunities for reconciliation.

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1. The Dayton Peace Agreement divided BiH into two 'entities': the Federation of BiH and the Republika Srpska.

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Bosnia and Herzegovina 20 years on from Dayton

Andrew Mayne

The coming two-and-a-half years represent what is possibly the last window of opportunity to accomplish what the Dayton Peace Agreement's Annex 7 set out to achieve.

The Dayton Peace Agreement ended the war in Bosnia and Herzegovina (BiH) on 14 December 1995, and its Annex 7 on 'Agreement on Refugees and Displaced Persons' established that: "All refugees and displaced persons have the right freely to return to their homes of origin [...] to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them."¹ In the following ten years, over one million of the 2.2 million people displaced by the conflict in BiH returned and/or recovered their pre-war property; more than 200,000 properties were restored to their pre-war owners through a Property Law Implementation Plan; and some 317,000 housing units were reconstructed.

Progress then slowed, as most of the remaining population of concern were vulnerable, had no property to reconstruct or were reluctant or too frail to return and unable to achieve solutions without special help. Recognition of this led to the Revised Strategy for implementation of Annex 7, adopted by both houses of the BiH parliament in June 2010, in which for the first time national political stakeholders agreed that extremely vulnerable people who were unable to return should be allowed to find a solution in their place of displacement. This in turn enabled the BiH authorities to start planning projects specifically addressing the needs of the remaining vulnerable households, including rehousing around 8,600 residents from the remaining 156 collective centres by providing non-profit social housing solutions and other specialised types of accommodation.

Now, almost 20 years since Dayton, an array of projects is in place; these projects, however, only have the capacity to assist a maximum of 11,000 families out of the total of 40,000 estimated to be either in need or considered entitled, and can only address

the most acute needs. It is estimated that 84,500² persons still holding IDP status and 47,000 'minority returnees' (those displaced who now found their ethnicity to be in the numerical minority in their areas of origin) are still in need of support to obtain a sustainable solution. The challenge for BiH today is thus to be able to identify and select the families who most need the assistance that is available, and to make sure that assistance does actually go to these people. While this sounds simple enough, five main recurrent problems typically hinder progress:

- fragmentation in the institutional setup of BiH that prolongs decision making and hinders coordination
- the absence of updated information on the persons remaining in need and the severity of the problems they face – information that is necessary in order to facilitate needs-based prioritisation and to counter the widely shared political conviction that members of all three constituent peoples should receive an equal share of assistance
- the lack of readiness and capacity of local authorities to assume responsibility for integration of minorities and for the social-welfare needs of vulnerable IDPs and returnees
- insufficient acceptance of the role that civil society needs to play in securing social justice for the vulnerable by consistently representing their interests to local authorities
- the tendency of administrative bodies to measure impact in terms of numbers of housing units rebuilt, rather than numbers of displaced families gaining access to rights, livelihoods and services.

In the worst-case scenario, these problems could defeat efforts to implement the Annex

7 Revised Strategy. Projects could take too long to implement, could assist people who no longer need help and leave stranded those still in need. The projects could risk building houses that then stand empty, using up the available resources while leaving the problem unsolved. Vulnerable displaced people, women victims of violence and minority returnees could continue to live in destitution and may pass on their marginalised status and sense of injustice to the next generation. Deep-seated accusations would continue to be traded between the entities and among their constituent peoples, and twenty years of progress and investment in reconciliation and restitution of justice could be put at risk.

On the other hand, the substantial projects and resources that are now in place provide a window of opportunity. The challenge is to engage municipalities, reach the neediest beneficiaries and overcome those obstacles that block realisation of rights and normalisation of status.

Stages of response

When the United Nations High Commissioner for Refugees (UNHCR) was called on, through Annex 7, to take the lead in BiH on developing a plan for addressing the problem of wartime displacement, it turned out that not one plan was needed but three in succession – though with the authorities progressively assuming the lead.

The first plan resulted in the return of more than 500,000 people to their places of origin in the first five years (1996 to 2000) after the war. When it was widely recognised in 1999 and 2000, however, that most of these were ‘majority returns’ (people who now found themselves in the ethnic majority in their place of pre-war residence), **the second plan** was drawn up, rallying international efforts behind minority returns. Conditions of return were often far from conducive and in some cases violent resistance by local authorities had to be overcome. Some 470,000 persons returned and/or had their property returned or reconstructed in this phase, including through the mechanism of the Property Law Implementation Plan (PLIP) overseen by the Office of the High

Representative (OHR)³, the Organization for Security and Cooperation in Europe (OSCE), UNHCR, the United Nations Mission in BiH and the authorities.

In some municipalities, returnees were denied access to employment and other basic rights by those opposing return. Almost 14,000 houses, including whole villages, were destroyed a considerable time after the war had ended, often to discourage the new minorities from returning. In some places, where minority returnee communities were left to fend for themselves, life got progressively worse. Many families were unable to stay while many more struggled to survive on subsistence farming.



High Commissioner for Refugees António Guterres visits returnees waiting for reconstruction assistance, Srebrenica, August 2009.

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The third and final plan began with the formulation of the Revised Strategy for implementation of Annex 7, recognising the hard-won acceptance of all stakeholders that many of the most vulnerable remaining displaced families would be unable to return and should therefore be assisted to find a solution in their current place of displacement. This policy shift led to the development of several major projects:

The Sarajevo Process is a regional dialogue initiated by UNHCR in 2005 to look for solutions to protracted problems of refugees and displacement in Serbia, BiH, Croatia and Montenegro – the four countries affected by the 1992 to 1995

conflicts. In BiH this coincided with the end of large-scale return movements. The Process, involving UNHCR, the OSCE, the European Union and the United States, initially made slow headway. It was revived in 2008 by the intervention of UN High Commissioner for Refugees António Guterres who, with specially appointed Personal Envoy for the Western Balkans Anne-Willem Bijleveld, succeeded in garnering donor support and persuading the four countries to sign the Belgrade Declaration in November 2011. This in turn led to a Donor Conference and the birth of the Regional Housing Programme in April 2012 (which raised almost €300 million for housing) to be implemented by the four country governments.

The Regional Housing Programme (RHP) aims to assist 73,600 beneficiaries through providing some 27,000 housing units in the four countries combined, with BiH planning to assist 14,000 persons (some 5,400 families). Challenges for

the RHP include building the capacity of partner countries to manage these major projects, including the selection of beneficiaries. This entails cooperation between the four countries to enable cross-border verification of overall eligibility, vulnerability and intention to return, and persuading municipalities to plan and deliver complementary measures to improve access to roads, electricity, water, livelihoods, basic rights and services – none of which are funded by the RHP itself.

A priority for BiH is to provide permanent accommodation for those in 'alternative' accommodation or in collective centres. Alternative accommodation is temporary housing provided by municipalities to displaced families who had been occupying abandoned houses but had to return them to their owners under the property restitution programme. Collective centres were meant to provide temporary accommodation for internally displaced people driven out of conflict zones and were either purpose-built or were pre-existing structures such as workers' barracks, abandoned offices, apartment blocks or hospital buildings. Most of these 'temporary' dwellings have since deteriorated to the point of being uninhabitable, with their residents among the most destitute in the country.

The solution devised for the remaining residents of collective centres is a project by the name of **CEB II** (CEB: Council of Europe Development Bank), funded by a CEB loan plus the state's own contribution, which formally began in November 2014. Forty-two municipalities submitted schemes to rehouse the residents of all of their collective centres in non-profit social housing. The planned social housing facilities will comprise new apartments for the residents – but will require payment of rent and utilities, which presents a major challenge to vulnerable families with little or no income.

Through the EU's Instrument for Pre-Accession Assistance (**IPA**)⁴, UNHCR was requested to receive and manage €7 million to support the coordination of the Annex 7 Revised Strategy in an



initial ten priority municipalities through capacity building to local authorities as well as individual assistance. UNHCR co-financed this action with an additional €1.1 million. Related projects run by UNHCR and the UN Country Team cover a further ten municipalities.

Lastly, under a **Joint Declaration** signed in June 2013, BiH's Ministry for Human Rights and Refugees (MHRR), the entity ministries, the EU Delegation, the UN Resident Coordinator and UNHCR committed to a strategy of support for Annex 7 implementation through a three- to five-year process of social inclusion targeting a range of socially vulnerable groups.

Conclusion

The coming two-and-a-half years to the end of 2017 represent what is possibly the last window of opportunity to get solutions on track and move effectively through the completion phase. The five recurrent problems highlighted earlier continue to put this desired outcome at risk. What is needed now more than ever is:

- strong leadership by the new government
- strengthening of existing national-international partnerships (by a

coordination mechanism and problem-solving body currently in formation⁵)

- joint action plans, balancing quality and speed of implementation, centred on greater assumption of responsibility by local authorities and civil society, and focusing on systematically identifying and addressing the most acute of the remaining needs
- continuity of funding to allow the needs-driven approach to be extended to more municipalities and mainstreamed into programmes for social inclusion and development.

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1. Text online at www.refworld.org/docid/3de497992.html.
2. Source: BiH Ministry of Human Rights and Refugees, 31 December 2013; subsequently adjusted by MHRR to 100,300, confirmation pending.
3. The High Representative for BiH and the Office of the High Representative created in 1995 to oversee the civilian implementation of the Dayton Peace Agreement.
4. The means by which the EU supports reforms in countries wanting to join the EU with financial and technical help. http://ec.europa.eu/enlargement/instruments/overview/index_en.htm
5. By the new Minister for Human Rights and Refugees, Minister Semiha Borovac.

Resolving a protracted refugee situation through a regional process

Olga Mitrovic

Protracted refugee situations are usually a result of political deadlock, and their resolution demands the involvement of a range of actors and a multifaceted approach focused on leveraging political will. Despite its shortcomings, the Regional Process in the Western Balkans offers a number of lessons for resolving such situations.

In 2011, Bosnia and Herzegovina (BiH), Croatia, Montenegro and Serbia signed the Joint Declaration on Ending Displacement and Ensuring Durable Solutions for Vulnerable Refugees and Internally Displaced Persons.¹ A year later a donor fund was established to implement a multi-year Regional Housing Programme (RHP)

to provide durable solutions to the 74,000 most vulnerable displaced persons.

This was the end result of a Regional Process to find durable solutions that was developed with strong support from the UN High Commissioner for Refugees (UNHCR), the Organization for Security and Co-operation in Europe (OSCE), the

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European Union (EU) and the United States. Despite the slow and imperfect progress of the Regional Process, and despite the specifics of the EU that cannot be replicated elsewhere, the fact that countries have addressed a political deadlock that existed for sixteen years can provide valuable insights for future policy responses to protracted refugee situations in general.

Return policies in post-war BiH and Croatia

In BiH, refugee return was incorporated into the peace agreement. The resolute commitment of the international community to enforce Annex 7 of the Dayton Peace Agreement, with the idea of reversing the effects of ethnic cleansing, facilitated the return of more than one million people, of whom almost half were 'minority returns' (returnees who would ethnically now be in a minority in their place of origin/return). Implementation of the Property Law Implementation Plan led to property restitution in BiH on the unprecedented scale of 99% (although it is significant that this did not in fact result in sustained mass return).

Conversely, in Croatia, where there was significantly less pressure from the international community, the government hindered minority return in a variety of ways, blocking the possibility of unlocking the protracted refugee situation for years. Impediments to return included discrimination, ethnically motivated violence and inadequate access to housing and employment. The largest issue affecting return was the government's decision to deprive *in absentia* 40,000 former residents of state-owned apartments (referred to as 'OTR' – occupancy and tenancy right – holders) of their property rights.

In 1996, Serbia hosted the largest refugee population in Europe: 617,700 people from BiH and Croatia. By 2008, despite mass local integration and granting of citizenship, Serbia still hosted 97,000 refugees. For years bilateral relations between Serbia and Croatia were plagued with refugee-related problems whereas BiH developed positive bilateral cooperation with both Croatia and Serbia. Yet there was a constant

awareness that the problem could only be resolved fully at a regional level.

Regional process

An important breakthrough came with the 2005 Sarajevo Declaration when Croatia, BiH, Serbia and Montenegro agreed to cooperate in identifying and removing obstacles to durable solutions by developing national road maps that would later be merged into a joint programme, with the OSCE, UNHCR and the EU assisting them in this endeavour. Though some moderate progress was achieved, the process soon reached a standstill due to Croatia's refusal to further discuss issues of social security, pensions and OTR. The Sarajevo Declaration lacked the necessary political backing, and the international stakeholders at the time had no consolidated approach or clear vision as to how to overcome this impasse.

The opportunity to reinvigorate efforts came in December 2008 at the Second High Commissioner for Refugees' Dialogue on Protection Challenges when Serbia was listed under the High Commissioner's Special Initiative on Protracted Situations as one of the five countries in the world with a protracted refugee situation that demanded urgent attention. The Executive Committee of the High Commissioner's Programme promoted a two-pronged approach: provide incentives for the countries in question to ensure their commitment to finding comprehensive solutions, and bring on board members of the international community with strong leverage capacity. Delegations from Serbia and Croatia confirmed their commitment to resolve the refugee problem and the Serbian government moved to re-launch the Sarajevo Process.

International efforts resulted in the 2010 Belgrade Conference at which the four countries' Ministers of Foreign Affairs adopted a communiqué reaffirming their commitment to resolving the region's protracted displacement situation; in this they highlighted the priority for assistance to be given to vulnerable persons, primarily those in collective centres, and stated that opting for return or for local integration would

remain the individual choice of each refugee. UNHCR, the EU and the OSCE issued a Joint Statement, extending their full support to the Regional Process, while frequent meetings between Croatia's newly elected President Josipović and his Serbian counterpart Tadić allowed the refugee problem to become prominent on the political agenda. These presidents, both considered moderate pro-European leaders, expressed their readiness to tackle sensitive issues – such as border demarcation, missing persons and mutual lawsuits for genocide – which had created an impasse with their predecessors.

The 2010 Belgrade Conference marked the start of a two-year period of intensive negotiations and work. Small working groups were established for each area of concern, their size and frequent meetings being considered the best mechanism for building trust among participants. The joint approach of the international community was an invaluable feature of the Regional Process. UNHCR and the OSCE provided continuous assistance and technical expertise to the groups while the EU instilled commitment to regional cooperation. The HC's appointment of a Personal Envoy to lead the process, and the transparency introduced in negotiations and video conferences, ensured that the international community spoke 'with one voice' to the countries.

Finally, an agreement on the Regional Housing Programme was followed by a Ministerial Declaration and later a donor conference where €261 million were pledged to finance the first phase.

Preconditions for success

What was possible in Belgrade in 2010 that was not possible in Sarajevo in 2005? The answer lies in three factors:

- a pragmatic approach by all stakeholders to addressing the needs of the most vulnerable and not repeating the failure from 2005
- the political will of Serbia and Croatia
- the strong leverage of the EU.

In other words, the approach to refugee issues was transformed because, within the EU



Bosnian refugees return from Kuplensko camp in Croatia to Velika Kladuša in B

enlargement context, the political leadership of Serbia and Croatia could not afford to waste this chance. The EU and UNHCR repeatedly conveyed that this was the last push to collectively address the remaining concerns, and the High Commissioner's Special Initiative in 2008 brought the international spotlight back on the Balkans. In 2010, Croatia still did not want to offer compensation to OTR holders but because of its EU accession hopes it had to improve its housing provision programmes and commit to the Regional Process. Serbia accepted the needs-based approach that was offered, while still insisting that the question of refugees' tenancy rights should continue to be pursued. When the compromise on OTR was reached, other problems could be addressed: pensions, validation of documents, and restoration of destroyed and damaged property.

The final key factor was the EU accession policy. Once displacement was incorporated into the wider EU enlargement package and the Regional Process came to be evaluated as part of the countries' overall accession progress, the EU became a game-changer and no country could afford to jeopardise the regional cooperation:

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BiH, December 1995.

*"We recognise that the successful resolution of these issues is vital to the further enhancement of positive and productive relations among our countries and citizens and **underpinning of our respective bids to join the EU.**" 2011 Joint Declaration [emphasis added]*

Conclusion

Progress on numerous issues has slowed down since the donor conference. The delay in implementing the RHP – with construction works only starting in July 2014, two years after the donor conference – has met with much criticism. Once Croatia joined the EU, state funding for reconstruction and housing programmes was cut drastically, and there is a stalemate also in the areas of pensions and return of agricultural property. Furthermore, declaring that the circumstances that led to displacement in Croatia no longer exist, in 2014 UNHCR recommended the cessation of refugee status for 49,506 refugees; although the decision on the cessation of status remains with host countries, the recommendation potentially jeopardises momentum.

Despite all its shortcomings, however, the achievements of the Regional Process cannot be ignored. The Regional Process proved to be an effective mechanism for pursuing

durable solutions in many respects. It was the first time that the Special Initiative was launched to prioritise resolving a particular PRS. It was the first partnership of UNHCR and the EU in this field. And it was the first, and probably the only time, that resolution of a protracted refugee situation coincided with the eve of accession to the EU of one of its parties. This conjunction of favourable factors may be impossible to replicate elsewhere but many instruments of the Regional Process can be replicated in other settings.

The first lesson is for UNHCR to act as a catalyst for mobilising international support and getting the right actors on board. In the former Yugoslavia the OSCE was the obvious choice due to their mandate and expertise. In a crisis where self-reliance of refugees is the primary challenge, UNDP or IOM would be more suitable partners. However, more than choosing agencies with appropriate mandates, a strong push from a political actor is needed. While the EU's elaborate conditionality mechanism cannot be replicated, other regional actors – such as the African Union, ECOWAS or ASEAN – could find economic or political incentives to offer to countries affected by protracted refugee crises.

The second lesson is for return to be addressed early on and embedded in the rule of law and recognition of rights; if this does not happen, injustice and grievances will remain.

Notwithstanding the deficiencies of the Regional Process, the fact remains that BiH, Croatia, Montenegro and Serbia have secured joint, comprehensive durable solutions to the worst refugee crisis in Europe since the Second World War. To that end, the Regional Process should be recognised for the real tangible solutions it has brought about.

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This article is drawn from the author's Master's thesis completed at the London School of Economics and Political Science, 2013-14. The opinions expressed in this article are those of the author and not necessarily those of IOM.

1. www.osce.org/pc/85049

Voices in displacement

Claudia Meyerhoefer

"These people are as if lost in time and space." Still displaced after 20 years, residents of collective centres in Bosnia and Herzegovina share their frustration. They need to be listened to.

The Bosnian war ended in 1995 but many of those displaced during the war still live in a situation of protracted displacement, neither adequately protected by the state nor fully able to access the basic rights of their citizenship. As of 2014, around 8,500 internally displaced people still live in about 100 collective centres in Bosnia and Herzegovina (BiH).¹

"If you would have asked me 15 years ago, I would not have believed that we would end up ... still having such problems."

I visited Mihatovici Collective Centre which is the largest in the country, with several hundred residents, located about 10km from the city of Tuzla and built in 1993 with Norwegian aid. Mainly displaced women and children from Srebrenica and eastern BiH reside there, by now including second- and third-generation IDPs. The second centre I visited, Hrasnica, was established in 1998 and is located outside Sarajevo in a former hotel. Since many families resettled, there are only 32 people still living there. Conversations with centre residents reflect how poverty and work are the main concerns of daily life.

"I don't have anything. Do you know what that means? Absolutely nothing."

"We don't have any salaries, we don't have any financial help. [...] I am just managing as well as I can. I have some cattle. I do whatever work I can, that's how I earn some money."

The IDPs in BiH have been dependent on aid for up to twenty years. Humanitarian aid provided essential support for IDPs who found themselves poverty-stricken after they fled their homes. However, donors and organisations have since shifted their focus, and programmes were terminated after the end of the emergency phase. Nonetheless,

many IDPs are still dependent on assistance today.

As many IDPs are elderly, some of them receive pensions. However, pensions usually do not suffice for even basic needs. This is an issue particularly for women, due to their longer life expectancy and lower number of years worked in formal employment.

The housing conditions are appalling. The buildings are old and fragile; some residents do not have heating or water; the space is inadequate for families; and other facilities such as telephones are often lacking.

"These houses that we live in, you have to come and see them. They are completely destroyed...."

Education is another major concern. Mihatovici has an elementary school, funded by NGOs and providing school materials, meals and afternoon projects for the children. A senior staff member made it clear to me that, in his view, educating children sufficiently so that they could "get out of here" was the only effective way to assist them. However, in order to go on to middle and high school, the children have to attend schools in nearby towns, and many parents are unable to pay for public transport.

In addition to the physical health problems many displaced people face (due to malnutrition, violence during the war, etc), many also suffer from mental health problems. Clearly, the violence experienced during the war and their displacement often have serious repercussions, such as depression, post-traumatic stress disorder, drug abuse and violent behaviour. I encountered alcoholism, depression, neurosis and the regular taking of sedatives. Furthermore, residents told of frequent conflicts in the centre:

"They fight a lot. They hit each other like in the Wild West."

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Collective centre in Hrasnica, 1995.

Yet IDPs face difficulties in accessing health services, partly because of lack of financial means and partly because of poor and patchy provision by the fragmented state apparatus.

Particular challenges for women

Displaced women experience additional, gender-specific obstacles in rebuilding their lives after displacement.

"As a displaced women, you're not just displaced, you carry [an] additional [burden]."

Women took responsibility for the survival of and provision for their families under the worst conditions during the war. Displaced after the war, they faced poverty and powerlessness, often left wondering about the fate of husbands or children. Many women are now the sole head of a household. During the war, women were pushed into new positions of influence and leadership, as well as income provision and decision making in the household. Several respondents confirmed these changes in gender roles and indicated that when the war ended, men took over leading positions in communities and politics again, and women were pushed back into the domestic space.

In a country where jobs are scarce in general, it is very difficult for displaced

women to compete for jobs, in part due to the priority placed on the recruitment of demobilised soldiers or family members of deceased soldiers and injured veterans. I found that although a few women residents of collective centres find agricultural work, most have no such opportunities. Lack of access to land is a common problem. Also, many women displaced from rural parts of BiH are not sufficiently educated to compete in other sectors.

"There should be crafts, workshops, things like that for women. Something should be organised so that we can contribute and produce things and sell them. We need jobs. We need ways to earn money."

Income-generating programmes (not only in BiH but globally) tend to put an emphasis on activities such as handicrafts and sewing, because they are traditionally viewed as female activities. This might mean independence for some women; however, these are often marginal economic activities. A better approach would be a more holistic one, which would support displaced women with skills training to access new markets and with opportunities such as micro-credit loans but which would also address their needs in other areas, such as psychosocial support. Catholic Relief Services, for example, provides individual help depending on

the needs of a family, such as livelihood opportunities, kitchen gardens, scholarships, agricultural machinery, housing and psychological support. Meanwhile, a positive example of providing an opportunity for self-employment is BH Crafts.² However, more skills training projects are needed.

Participation and consultation

Many IDPs feel hopeless in the face of a government that gives the impression that it has turned its back on them. The lack of tangible success in assisting IDPs to find a solution over the past two decades has left them disillusioned and resentful, feeling ignored and forgotten:

"These people are as if lost in time and space."

"Social workers never come here."

"Whenever someone comes, they visit the manager. We don't know who came, for what reason; we are never informed about anything, and we are not really asked."

"This is the first meeting that we have been invited to."

Yet giving displaced people a chance to be heard and to participate in decisions affecting them is crucial for building effective support programmes and finding a sustainable solution for them. In addition, it would do more than just give them a voice. It would strengthen their sense of personal worth, and their sense of community and of belonging in their own country.

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1. In 2014, while studying for an MA in Intercultural Conflict Management I undertook qualitative research into the current challenges facing IDPs in BiH (in cooperation with CESI, the Centre for Refugee and IDP Studies in Sarajevo) and conducted 20 in-depth interviews with IDPs and local and international actors. All quotes in this article come from these interviews.

2. BH Crafts provides women with tools and material for knitting clothes, which the company then sells. The programme is now open to all women seeking additional income but was started as a project for residents of the Mihatovici Collective Centre and many of the beneficiaries are displaced women.

Property rights and reconstruction in the Bosnian return process

Inmaculada Serrano

Sidelining a rights-based approach in the area of property restitution and reconstruction in Bosnia and Herzegovina resulted in an unequal impact on rural versus urban displaced populations.

Annex 7 of the Dayton Peace Agreement represented a breakthrough in the history of conflict settlement. It stated for the first time that displaced persons should be able not just to repatriate to their country of origin but to return to their actual pre-war homes. The rationale for this was the perceived moral imperative to reverse the 'ethnic cleansing' that had occurred during the war (and that the international community had been unable to stop), and the success of Annex 7 was clearly viewed as directly related to 'minority returns' – that is, the return of those among the displaced who now found their ethnicity to be in the numerical minority in their areas of origin. Nonetheless, this aim presented

a clear tension with the human rights language in which it was anchored, which emphasised the individual's right to choose their destination (i.e. whether to return or not), and their right to property restitution or compensation (Article I.1 and 4 of Annex 7).

Many properties had been destroyed during the war. Access to many other properties, mostly in urban areas, was impeded because they had been occupied by other displaced persons of a different ethnicity, and restitution was fiercely opposed by all sides. In response, in 1999 the international community conceived and implemented the Property Law Implementation Plan (PLIP³), overseen by the

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Commission for Real Property Claims of Displaced Persons and Refugees (CRPC). With restitution of the 200,000 occupied housing units increasing from 21% in the first year to 92% in the fourth,² PLIP constitutes one of the biggest successes of the implementation of Annex 7 and restitution of rights.

However, it is frequently overlooked that reconstruction was an even more critical issue than property restitution. UNHCR estimated the number of housing units that were partially or completely destroyed to be 459,000 (more than double the number of repossession claims filed by CRPC). 60% of the housing stock was partially destroyed and 18% was completely destroyed, not only during the fighting but also after the signing of Dayton by those trying to prevent people from returning.

By 2008 only approximately half of these units (some 260,000 houses) had been rebuilt, mainly because of a lack of funding.³ The stark contrast between the robust and decisive role of the international community in the implementation of property rights and its much more deficient role in the reconstruction process had to do mostly with the costs of the latter. It is significant that while PLIP was obviously anchored in the language of rights, reconstruction assistance was largely specified as humanitarian assistance.

Rural versus urban

PLIP is considered a success not only in terms of rights restitution but also because it facilitated a breakthrough in the minority returns process by the year 2000 when properties were finally made available to their owners. It is less frequently emphasised, however, that this involved evicting the people occupying these properties, a large proportion of whom were people of rural origin for whom the main housing problem upon return was reconstruction, not repossession.

The tension between the rights-based approach implied in the Dayton Peace



Refugees return from Kuplensko camp in Croatia to Velika Kladuša in BiH, December 1995.

Agreement and the moral (and political) imperative of reversing ethnic cleansing becomes clearer when considering the position in which (mostly) rural returnees were put. In many cases, following implementation of PLIP, families were evicted **before** their houses were reconstructed, because of the shortage of reconstruction funds. Whereas in the initial years after the end of the war there were plenty of funds available, donor fatigue and a serious reconstruction funding gap were evident by 1999, and in 2002 the funding gap between demand for reconstruction and available funds amounted to €600 million.

People holding IDP status and under a certain income threshold were entitled to temporary alternative accommodation. But with time, they risked losing their IDP status (and access to alternative accommodation) if they did not commit themselves to reconstruction. And once reconstruction assistance was granted, the right to alternative accommodation was lost. In short, PLIP effectively pushed people, mostly of rural origin, to return.

This is not to say that there were not genuine cases of voluntary return among rural returnees; on the contrary, many of these returns had been greatly longed for. Some of the local people I interviewed, however, characterised the process of return in three main stages. First came

the 'pioneers' – or "the crazy ones" – who returned spontaneously, without any external support or backup. Then there was a wave of returns once reconstruction assistance started being available. Those returning after that point were, in their own words, mostly "people who were left with no other choice".⁴

Wealthier households who did not (as yet) wish to return were able to rent or buy property where they lived now. But this was not the case for poorer families for whom the only available assistance, besides the support they received as registered IDPs, was reconstruction assistance. Since a condition for receiving reconstruction assistance was being present in the area of return, many did opt to return even if they had to live in tents, partially reconstructed houses or improvised shacks. This situation lasted for months and even years in some cases.

Sidelining the right to choose

There is no doubt that the international community faced a fundamental dilemma regarding minority returns in BiH but, in pursuit of the goal of reversing ethnic cleansing, people's right to choose was, to a large extent, sidelined. This requires a profound re-thinking within the international community, particularly so considering the relatively poor results achieved in terms of reversing ethnic cleansing. A policy which took into account individual motivations and constraints, and adjusted its time-frame accordingly, might have been more effective in enabling return, as well as more in line with the recognition of people's right to choose enshrined in Annex 7.

Minority returns have in fact taken place largely to rural areas, with towns registering much lower numbers. But the reasons for this asymmetry also have to do with security considerations, given the larger ethnic segregation in the countryside, as well as with economic factors, since agriculture and cattle-breeding provide a means of subsistence in an environment of widespread discrimination and a depressed economy. In addition, repossessed houses in urban areas were in demand by members

of the majority ethnic group that had been displaced mostly to towns and cities. This made it possible for urban dwellers to sell these properties or to exchange them. This option was not available in rural areas where the only benefit that displaced people could derive from their reconstructed properties was actually making use of them.

The international community went to great lengths to provide the necessary security conditions, as well as the harmonisation of health-care systems and pension funds and the reconstruction of infrastructure to provide the basic conditions for return. But the main issue was – and remains – the lack of employment opportunities and widespread discrimination in accessing the very limited opportunities that do exist. In this regard the international community also failed to meet the promise made in Article I of Annex 7 about the right to restitution of, or compensation for, any property of which individuals were deprived during the conflict. In practice, properties other than houses – such as business premises and usurped land – did not receive similar attention in the repossession or compensation process. All of this undoubtedly inhibited people from returning, and contributed to the fragile nature of the minority return process overall.

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Resolving protracted displacement through social housing

Marc D'Silva and Sanela Imamovic

A social housing methodology recently introduced in Bosnia and Herzegovina illustrates the need for certain key components in any strategy to address the shelter and livelihoods needs of vulnerable citizens.

By 2011 – 16 years after the signing of the Dayton Peace Agreement – the return process in Bosnia and Herzegovina (BiH) was considered successful by many standards. Of the 2.2 million citizens displaced during the war, over 91% had returned to their communities of origin or integrated into new communities. Over 320,000 housing units had been reconstructed and repaired. And yet there were still 193,000 displaced persons and refugees in need of durable housing solutions. In particular, 8,734 displaced persons were still living in poor, unhealthy conditions in the country's 160 collective centres, which for the most part were never designed for residential use.¹

These 193,000 people were unable or chose not to take advantage of earlier housing reconstruction programmes for a variety of reasons, including:

- lack of certification of land mine clearance at or near their property
- lack of utilities and basic community infrastructure
- insufficient employment opportunities
- ineligibility of tenants who had never owned property
- inability to prove legal title to property
- unwillingness to return to a place of trauma.

Given this, Catholic Relief Services (CRS) decided in 2007 to refocus its strategy away from individual house reconstruction and towards the introduction of a new social housing methodology. This would help to build the capacity of local government authorities to provide durable housing solutions for collective centre residents and other vulnerable displaced groups including

Roma, readmitted asylum seekers,² persons with disabilities, and the elderly.³

Social housing principles

Through social housing, a community can help provide affordable housing for those of its citizens who are unable to meet their housing needs independently. It can take the form of new multi-unit, multi-storey structures or of individual units constructed on top of or rehabilitated within existing housing stock. Whatever the type of social housing, three principles are essential. Firstly, ownership needs to be clearly defined and registered with local government. Secondly, management and maintenance responsibilities must be clearly articulated and organised. And, thirdly, eligibility criteria and apartment allocation procedures need to be clearly defined and communicated from the outset.

CRS' social housing strategy includes the following components:

Formal working group: This needs to be established from the outset to facilitate collaborative partnerships with local government officials, while also building municipal capacity to assume management and maintenance responsibilities after tenants move in.

'Book of Rules': This articulates the key principles of social housing and defines the roles and responsibilities of each stakeholder. Official registration of this document in the local courts guarantees that future politicians will be unable to misuse or sell the units for at least 25 years.

Affordable rents: Rents need to be below market rates. Although this can be a challenge



Fuad Foto

This social housing in Potočari near Srebrenica was built in the last six years (with funding from the Governments of BiH and the Netherlands) and provides 58 apartments. Most tenants are returnees. (Potočari was the location of the Srebrenica massacre and it is here that the Srebrenica-Potočari Memorial and Cemetery for the Victims of the 1995 Genocide is located.)

for some chronically displaced persons used to receiving free housing, it can promote dignity and reduce dependency, and generates the resources needed to manage and maintain the buildings.

Family ‘socio-economic card’: This card documents the eligibility criteria of each family and then serves as a baseline against which future improvements in household income and standard of living can be compared. Those families whose incomes subsequently rise above the official poverty line will have their rents readjusted closer to the market rate.

Sustainable livelihood component: Each family receives a form of assistance to help cover monthly rent/utility payments and to rebuild household assets lost during the war. Livelihood options are tailored for each family and may include agricultural equipment, training/support for selling produce, or subsidies to local companies to encourage the hiring of minority returnees.

Social linkages and networks: The involvement of local government authorities, NGOs and other stakeholders in the

communities of return is important for providing appropriate support to returning families.

Mixed-use developments: Promoting mixed use of buildings allows minority returnees, Roma, persons with disabilities and other marginalised groups to integrate physically, economically and socially with members of the majority community. In some circumstances, special provision can be made to attract professional and technical cadres for which there is a demand in the community; in other situations, part or all of the ground floor of a housing development can be made available for commercial purposes to provide employment and marketing opportunities.

A management system: CRS provides a specially designed management information computer software programme (and training in its use) for the relevant municipal departments to enable them to: compile key information and data on all social housing buildings; track rent payment and arrears; organise maintenance schedules; and generate reports for municipal, entity and state-level purposes.

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Alignment with international standards: This is in order to help BiH comply with any new requirements associated with possible future accession to the European Union.

The BiH government has learned the risks of omitting one or more of these key components from its own social housing projects, and of focusing only on the building construction aspect. An assessment of the social housing constructed by the government between 2009 and 2012 concluded that failure to clearly define from the outset issues of ownership, management, maintenance and tenancies had resulted in no-one fulfilling those responsibilities; furthermore, the lack of legislation and policy framework governing social housing was preventing both government and tenants from fully realising its benefits.

Key results to date

By the end of 2014, 762 displaced persons and returnees in nine municipalities around the country had secured safe, dignified living conditions in 273 social housing units constructed by CRS. Six years after signing tenancy contracts, 93% of families were still living in the social housing units.⁴ Of the 7% no longer present, over half of them had had a positive reason for leaving, e.g. marriage, voluntary emigration or securing employment in another town. Only 3% of social housing units were vacant. This stability is an important factor contributing to the social and economic growth of their communities. Furthermore, 22% of family members living in the social housing units were under 18 years of age, demonstrating the methodology's effectiveness in attracting the type of young, working-age families needed to revitalise war-affected communities.

Promising early results led the BiH government in 2010 to include social housing as a preferred element in its Revised Strategy for the Implementation of Annex 7. In the years that followed, the Ministry of Human Rights and Refugees (MHRR) incorporated social housing as a key strategy in two nationwide programmes through which more than 2,900 social housing units

will be constructed.⁵ In 2015, the MHRR adopted CRS' Social Housing Manual⁶ as the official guidance for all municipalities participating in these two programmes.

After initial efforts to establish legislation at the state level stalled as a result of a broader political stalemate, CRS decided to engage key officials at the municipal, canton and entity level, where there is the political will to develop and pass social housing strategies and legislation. In 2013, CRS succeeded in helping two cantons (BPK Goražde and Zeničko-dobojski) develop and pass the country's first ever social housing legislation. Another five municipalities (Srebrenica, Prijedor, Goražde, Mostar and Banja Luka) have developed social housing strategies that provide a common framework for all current and new initiatives. And in 2013, the MHRR incorporated social housing into the second phase of its initiative to support the return and integration of asylum seekers in ten targeted municipalities and Brčko District, demonstrating that the Government of BiH now understands the value of social housing in helping municipalities to address the shelter and livelihoods needs of their most vulnerable citizens.

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1. Data taken from BiH Ministry of Human Rights and Refugees (2011) *Joint Regional Programme on Durable Solutions for Refugees and Displaced Persons, Framework Programme*. <http://tinyurl.com/MHRR-framework-prog-2011>

2. Persons from BiH who had sought asylum in other (mostly EU) countries in Europe and have been returned via one of the formal agreements signed between the governments. About 70% of these readmitted asylum seekers are Roma whose lack of birth or registration documents makes it difficult to prove that they previously lived in BiH.

3. CRS' social housing initiative was cited as one of two best practices for integration of Roma in the Western Balkans. See Organization for Security and Cooperation in Europe (2014) *Best Practices for Roma Integration: Regional Report on Housing Legalization, Settlement Upgrading and Social Housing for Roma in the Western Balkans*. www.osce.org/odihr/115737

4. Monitoring data from CRS/BiH staff, May 2015.

5. See article by Mayne A 'Bosnia and Herzegovina 20 years on from Dayton', pp8-11.

6. www.crsprogramquality.org/publications/2015/8/25/manual-for-non-profit-social-housing.html

Asking the right questions in research on psychosocial well-being

Selma Porobic

New research is attempting to address the lack of empirical grounding for much of the psychosocial programming in post-war trauma in the Western Balkans.

Psychosocial work by local and international mental-health professionals became a standard and widespread dimension of the humanitarian response to war trauma in Bosnia and Herzegovina (BiH), Croatia and Kosovo during the 1990s. Generally, international programmes in the region promote the belief that all those displaced by war are traumatised and that external psychosocial interventions are essential. The efficacy of these interventions is taken for granted and yet empirical research on the subject is scarce.

During the war, shortage of research resources left little room for data collection or impact studies. In the aftermath of hostilities this trend mainly continued. In addition, attempts to conduct comprehensive research in the field of mental health often failed due to local people's increasing distrust, especially of foreign agencies and non-governmental organisations. Post-war treatment and mental health services in BiH therefore rarely focused on war-displaced and returnees as specific target groups. Rather, the whole civilian population was viewed as vulnerable, traumatised and incapacitated but without any systematic investigation into resilience and general well-being.

In the same way, studies addressing the mental health of people displaced by war in the region have mainly focused on whole populations, rather than sections of populations, and have ignored questions of resilience.

Mental health of war displaced and returnees

Questions of mental health are still salient in BiH, Serbia and Kosovo. According to EU project UP.S.TREA.M¹, the number of persons with mental health difficulties

is higher in these countries than the EU average, with the causes related to two decades of stresses such as war, ethnic tension and poverty – and the lack of organisation in the mental health sector.

Recognising this and the lack of scientific research into the current state of psychosocial well-being among marginalised social groups, a multidisciplinary research team of 18 scholars in three countries (Serbia, Kosovo, BiH) headed by the team at the University of Sarajevo² and funded by the University of Fribourg's Regional Research Promotion Programme (RRPP) is conducting a study on psychosocial health among women displaced by the war. The research aims to provide insights into the connections between migration and mental health in a post-war society also undergoing a broad socio-political transition.

On the whole, work on improving mental health in post-war BiH has been involving many different stakeholders at various levels and working with various target groups but it is not yet integrated with the state-run mechanisms of service provision. Specific groups like women raped during war, some of whom were displaced, have been targeted but the formal system largely ignores forced migrants. Added to that are the huge problems in funding and in conducting research and assessing evidence-based practice.

Following the ongoing reform of the mental health sector, new strategies of work aim to involve social services in protecting and promoting the mental health of citizens in general and of returnees and displaced persons in particular (as a marginalised, vulnerable group).³ Improving social inclusion is one of the key requirements for harmonising the social development of

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BiH with EU standards. Social inclusion requires partnership at all levels between governments, public institutions and civil society but this is proving very challenging in a country which has a plethora of political and administrative decision-making centres (14 levels of national decision making which are subject to conditions imposed by external actors such as the World Bank, the International Monetary Fund and the EU). However, the new centres for mental health (resulting from the reform) have the potential to provide more adequate mental health services as they aim to work, more appropriately, through multidisciplinary teams and inter-sector cooperation.⁴

The broader societal context

Bearing in mind the complexity of BiH's socio-economic situation, the RRPP-funded research⁵ is shifting the emphasis from the individual clinical health perspective to the more complex social dimension of understanding the affected displaced persons' and returnees' reintegration process, in relation both to their war experiences and to the country's prevailing socio-economic situation. In this way important generational differences, gendered patterns and urban/rural discrepancies are emerging, and mental health assessments are being studied in the broader societal context that inevitably has an impact on a person's overall psychosocial well-being.

Through empirical cross-case analysis in BiH, Serbia and Kosovo, the project is addressing the following research questions: How does the experience of inter-ethnic violence, large-scale war displacement and protracted transition affect the psychosocial health of female forced migrants in each of the three environments? What is the state of their psychosocial well-being, including both distress and resilience factors, in these challenging social environments? What is the nature of psychosocial support, both public and non-governmental, formal and informal, provided to this population? What should be done to address the psychosocial needs identified and to fill gaps between existing policies and

programmes? Which good practices (if any) could the competent authorities and different national, regional and international stakeholders build on to improve the practice of and access to psychosocial services?

Conclusion

Sound and effective policies require a strong evidential basis. Only with this, and the in-depth insights that will emerge from the evidence, does it become possible to: identify how government policies and programmes can best assist targeted populations; monitor how effectively resources are being used; foster learning and development in the area; and support stakeholders in their roles and responsibilities.

In addition, the network building that such research involves among stakeholders of different professional and academic backgrounds across the region and internationally helps establish and develop an inter- and trans-disciplinary platform for the long-term benefit of forced migration studies in the region.

Much of our experience from post-war BiH underlines how psychosocial service provision for displaced and returnee populations should always be based on extensive evidence-based research. Only then will it have a direct bearing on the quality of life for women returnees, internally displaced persons and refugees.

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1. 'UPdate of Socializing and TREatment in Mental health' – involving Caritas Italiana in Serbia and Association Fenix in BiH.

2. In partnership with Serbian and Kosovo research teams.

3. Social Inclusion Strategy of Bosnia and Herzegovina (2008-13). The Government of Bosnia and Herzegovina is currently working on two strategic documents: the Country Development Strategy and Mid-term Review of the Social Inclusion Strategy.

4. The Mental Health Project in Bosnia and Herzegovina, supported by the Swiss Agency for Development and Cooperation and the Swiss Cantons of Geneva, Jura, Bern and Fribourg has completed its first phase (2010-13) and has now entered its second phase.

5. Entitled 'Engendering Forced Migration, Socio-political Transition and Mental Health in BiH, Serbia and Kosovo'. For more information see www.cesi.fpn.unsa.ba

Wartime division in peacetime schools

Valery Perry

An ethnically divided educational system in Bosnia and Herzegovina continues to limit sustainable return, and to hamper reconciliation and the reconstruction of society.

The inclusion of Annex 7 in the Dayton Accords was seminal in many ways but, while the return of property to the original rightful owners was enormously successful, the return of people to their pre-war homes was not such a success. This was particularly so in the many cases in which a returnee would now be in a demographic minority in their pre-war community. There was little or no effort by political leaders to create a genuinely welcoming environment for the return of pre-war inhabitants or to jump-start post-war political reconciliation. Minority return remained a daunting prospect, with returnees having difficulty finding work in their pre-war communities, and facing significant discrimination in terms of social relations and in terms of access to public services such as health care, police protection, social welfare – and schools.

The education system in Bosnia and Herzegovina (BiH) is a logical consequence of both the lack of meaningful and systemic political reconciliation over the past two decades, and the practical public policy implications of the power-sharing state structure agreed at Dayton. The country's education infrastructure was not immune from the new devolved, fragmented and, some would say, convoluted structure. Schools continued providing instruction with the same ethnically exclusive character as during the war.¹

In the absence of any state-level Ministry of Education to coordinate or drive educational policy, the entity- and canton-level Ministries of Education worked along separate and unequal paths. As a result, virtually every school in BiH continues to have its own dominant ethnic 'flavour' representing the majority population in that community. This is manifest in the different curricula and textbooks for Bosniak, Croat and Serb schools, different holiday

celebrations and, in effect, the active and ongoing cultivation of different and often mutually incompatible worldviews.²

Different methods, same results

Where there are sufficiently mixed communities of Bosniaks and Croats in the Federation to make the simple imposition of one curriculum impossible, this has led to over 50 cases of 'two schools under one roof'. In these cases school buildings are 'shared', with different groups of students taught either the Bosniak or Croat curriculum in different wings, floors or shifts. In the handful of communities in the Republika Srpska (RS) that have seen sufficient return of non-Serbs, non-Serb students (primarily Bosniaks) study the RS curriculum unless there is a sufficient number of minority students to allow them to follow 'their' national group of subjects (NGS), including history, geography, mother tongue and religion, at which point they separate from their Serb peers for these subjects. Whether in homogenous or mixed areas, children are confronted with and taught mono-perspective narratives, and whether the divisions are visible (as with the '2-in-1' schools) or more subtle, the result is the same – a generation of young citizens with a meagre sense of their shared future in, or vision for, their country.

There was a period of time, particularly between 1999 and 2007, when educational reforms began to take shape. The needs of returnee children were explicitly recognised in the Interim Agreement on Accommodation of the Rights and Needs of Returnee Children, signed in 2002, which aimed to end the most blatant practices that prevented sustainable return. An effort to remove explicit hate speech from history textbooks began, and the most ethnically exclusive school names and symbols were removed. The 2-in-1 schools (themselves

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an 'interim' solution) were in some cases improved through a number of attempts at administrative unification. The state-level Ministry of Civil Affairs developed a small education portfolio; a state-level Education Agency was developed including an advisory capacity to ensure consistent curriculum standards and learning outcomes; and a Conference of Ministers of Education was established to advise, consult and coordinate.

However, in the absence of either a legal commitment to increasingly harmonise and integrate educational systems, or the political will to press for such an inclusive agenda, these bodies have been greatly limited in their work, and such reforms failed to touch the core problem of the divided curricula and the broader continued policy of ethnification of public life in BiH.³

In such a system, minority returnees have remained minorities, forced to choose to assimilate, to study separately (if there are sufficient numbers of returnees) or, perhaps, to move, giving up on the idea of return. In the past few years, reforms have stopped and there are even signs of regression. For example, in the RS, in 2013, parents in the village of Konjević Polje (not far from Srebrenica) pulled their children out of school and organised demonstrations in Sarajevo (including an ad hoc tent city where some of the protestors slept) in protest against RS policies and practices that required their children to study the RS curriculum.

The Bosniak parents were not, however, demanding a more inclusive school approach for both Bosniak and Serb students but their own Bosniak curricular subjects – thereby also buying into the dominant separation narrative. This case exemplifies the dynamics of exclusionism and extremism that have come to dominate policy debates. The RS authorities did not take steps to accommodate these demands, and have instead reinforced division and ethno-national tensions by insisting that those few schools that do offer the NGS option (around 20 schools) refer to the "language of the Bosniak people" rather than the "Bosnian language", further reinforcing the problems of a country that consists of 'constituent peoples' rather than citizens.⁴

Conclusion

In the absence of international pressure or grassroots demands to revisit the country's divisive educational system and policies, there is no reason to believe that the country's schools will improve or become more broadly inclusive; the status quo suits the ruling nationalist political parties who are resistant to more civic options that could weaken their own hold on power. In the long term this will both threaten the return that has occurred to date and effectively close the door to any future returns.

Inclusion of the right to return in the Dayton Peace Agreement was a noble ideal that in many ways fell victim to the *Realpolitik* of the post-war Dayton state. Those persons displaced by the war who have remade their lives elsewhere have little incentive to return to a country that remains in a state of frozen conflict, exemplified by its divided education system. Twenty years after Dayton, this state of affairs should be of concern not only to people interested in the Balkans but also to those working to stabilise diverse post-war states in other parts of the world. Far from being a 'soft' policy matter, education in a post-war state is a security issue that it is perilous to ignore.

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2. The District of Brcko is a partial exception, with children studying together somewhat more than they do elsewhere. See Perry V 'Democratic Ends, (un)Democratic Means? Reflections on Democratization Strategies in Brcko and Bosnia-Herzegovina' in Innes M (Ed) (2006) *Bosnian Security After Dayton: New Perspectives*. Routledge, pp. 51-70. <http://tinyurl.com/PerryV-2006-Routledge>

3. Perry V 'Classroom Battlegrounds for Hearts and Minds: Efforts to Reform and Transform Education in Post-war Bosnia and Herzegovina' in Lishaug O and Ramet S P (Eds) (2013) *Bosnia-Herzegovina Since Dayton: Civic and Uncivic Values*. Longo Editore Ravenna. pp225-246. <http://tinyurl.com/PerryV-2013-Lishaug-Ramet>

4. Jukić E 'Hundreds of Bosnian Pupils Fail to Start School', *Balkan Insight*. 1 September 2014. www.balkaninsight.com/en/article/hundreds-of-pupils-in-bosnia-did-not-start-school

Their last name is 'refugee': return and local activism

Peter Lippman

Sustainable refugee return can only take place in Bosnia and Herzegovina when ordinary people and human rights activists are included as full participants in the recovery process.

As a result of the 1992-95 war, over two million people – fully half the population of Bosnia and Herzegovina (BiH) – were displaced. Of that number, well over a million people fled to dozens of countries around the world. The rest – internally displaced persons – ended up in collective centres, in abandoned houses belonging to other displaced persons, or staying with relatives in the entities controlled by their ethnicity: Serbs to the Republika Srpska (RS), and Croats and Bosniaks (Bosnian Muslims) to the Federation.

Although the Croats and Bosniaks were formally allied at the end of the war, the Federation was ethnically divided as well. Territory that ended up under the control of Bosnian Croat forces amounted to about 20% of BiH, with another 30% under Bosniak control. Bosnian Serbs controlled the other half of the country. The ethnic homogenisation of these territories was nearly complete and, for the first time, Croats, Bosniaks and Serbs were each designated as 'minorities' in those areas where their own ethnicity did not hold power.

"Poor people, poor people. All split up, all spread out everywhere." (Raba, aged 70, Sarajevo)

Assessing the wreckage at ground level

The displaced persons I encountered in BiH after the war¹ were living in collective centres (schools, barracks and hotels, temporarily converted for this use) and in the homes of relatives, or in abandoned houses and flats. While they may have been residing in a 'temporary' home for quite some years – and often this was the pre-war home of someone now displaced to the other side of the inter-entity borderline (IEBL) – very few of the displaced were comfortably settled, and a large number were living in wretched conditions. This, combined with homesickness, was the impetus for going home.

In the eastern Bosnian city of Goražde, Bosniaks who had been displaced from the industrial suburb of Kopači and from nearby Višegrad were crowded within the city limits. In the northwestern part of the country, displaced Bosniaks from Prijedor and Kozarac had returned from Croatia but were still internally displaced. Many of them came back to Sanski Most – not far from their homes but still on the far side of the IEBL. Displaced Srebrenicans who had not fled abroad were living in poor conditions in Tuzla and the outskirts of Sarajevo. Meanwhile, Croats who had been expelled (by Serb or, later, by Bosniak forces) from their ancestral homes in central BiH were displaced to western BiH or to parts of Croatia. There, they occupied homes owned by Serbs who had been expelled. And Serbs from Mostar, Sarajevo and central BiH had been resettled in parts of the Serb-controlled entity.

All of these ethnically re-concentrated populations now formed homogeneous voting blocs that leaders on all three sides could rely on for support. Those leaders therefore had little or no interest in helping them return to their pre-war homes. There ensued a period wherein, at best, many politicians paid only lip service to refugee return; much more common was open obstruction to return in any direction.

"Most of us would like to return home. As for myself, every morning when I wake up, I ask myself, 'What am I doing here?' The people of Tuzla have become tired of us. We are second-class citizens here. Our last name is 'refugee'." (Zehra, displaced from Bratunac to Tuzla)

It was left to the ordinary people, championed by grassroots activists, to fight against the post-war geographic and political divisions that kept them powerless. Quite soon after the end of the war, thousands of displaced people mobilised to return

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Writing on arch reads: 'Returnee settlement Sućeska'. Sućeska is a village in the municipality of Srebrenica, and was the first return settlement in the municipality. June 2000.

to their pre-war homes but it was to be an uphill battle. These local activists formed organisations to promote their own return and that of their communities. Many such organisations were supported both by local people and by the international community, but potential returnees faced obstruction and intimidation from local authorities and from others who covertly sabotaged return efforts. Damaged homes were rebuilt only to be bombed again, and returnees were assassinated or intimidated into giving up and leaving once again. Mines were planted on roads in Gacko and Stolac. In late 1999, an early returnee to Srebrenica who was an employee of the municipal council was stabbed and left for dead in the municipal building. In that same period, dozens of rebuilt homes in Srebrenica were torched.

The most effective deterrent to return, however, was non-violent, with massive 'obstruction at the office window' perpetrated by all three sides. Slavenka, who had been displaced from Sarajevo, described the ordeal she faced when she tried to return:

"When I returned, I found out that there was someone in my apartment. The man who was living

there ... sent me a message that I would never get my apartment back. I went to the police and told them about that person. They said to me, 'And what should we do, throw him out? We can't help you.' I went to the municipal offices and to the ministries – I knocked on every door, everywhere, and nothing happened. Everyone supposedly filled out forms and wrote letters but they just lied to me. I went around and around for almost a year trying to get my apartment back. ...they were kicking me around like a ball."

Tent encampments

The grassroots activists who led dozens of local associations campaigning for return persisted in their efforts. When they were rebuffed by local authorities and ignored by international agencies, they set up tent encampments in or near the villages where they wished to return.

One of the first organised returns was that of Bosniaks to the village of Jušići, not far from Zvornik in eastern RS. In October 1996, with the encouragement of the prominent return activist Fadil Banjanović,² dozens of returnees set up tents and got to work clearing rubble from their demolished farmhouses. They had to repair an access

road to the village and watch out for mines, which hampered the planting of their first crops. During that month "there were more policemen than returnees, to show that we were not wanted, even among the ruins," one villager reported. Despite threats and occasional gunshots, the returnees persisted.

By the spring of 1998 more than half of the pre-war population of this village had returned.

At that point, return to numerous villages was underway in that part of the Republika Srpska. In Jušići, returnees began to install telephone poles in order to access electrical power from the Federation but the RS authorities ordered the poles to be removed. Returning children were bussed across the IEBL to attend schools in the Federation. With time, the security situation around Jušići improved but transportation and water supply remained a problem for several years.

Activists for return found ways to attract the attention and support of international officials, demonstrating in front of embassies and near the headquarters of the Office of the High Representative. In the snowy months of late 1999 the establishment of a tent settlement, hard by the IEBL separating Goražde from the RS, prompted criticism on the part of some international officials. The tent encampment, housing dozens of would-be returnees, was perched on a hill above Kopači; on the tents, hand-painted signs read "Kopači is the key to Annex 7" and "Kopači is the key to return". In his office in Tuzla, Fadil Banjanović told me, "There is no alternative to return. We are for return in all directions. We won't call it two-way return, or minority return – just return. We are an organisation that doesn't hold panel discussions, or publish lofty declarations."

In response to pressure like this, international officials finally began to make significant changes to support return in 1999.³



Sign on tent reads: 'Kopači is the key to Annex 7 for all of Bosnia and Herzegovina'. Tent encampment on the edge of Goražde, above the village of Kopači. November 1999.

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They promulgated laws against obstruction and removed some of the worst offenders. By the end of the 1990s, return picked up, and in the next couple of years it peaked and several hundred thousand displaced people managed to return to their pre-war homes. Not only did Bosniaks return to parts of the Serb-controlled entity and western BiH; Serbs and Croats returned to their pre-war homes as well.

However, the fact that the warlords and their political heirs remained in power meant that return did not happen on a greater scale. In some places, such as Višegrad, no significant return took place, and in others, such as Prijedor and Zvornik municipalities, at its peak return only amounted to some 50% of the pre-war displaced population.

Difficulties with recovery

In the period since return levelled off, the demographic map of BiH has hardened with some 10-20% of returnees living in their pre-war homes. The age of the returnees is skewed towards the older part of the population. Younger people who spent a significant part of their formative years in their new homes found ways to remain there, and thousands have left the country altogether since the war. Preliminary results from the autumn 2013 national census point to a current population of 3.7 million, compared to the pre-war population of 4.4 million.⁴ Thus, in the last decade and more, public discussion of return refers to the sustainability of return that has

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Communal building above Kopači, used by inhabitants of the Goražde tent encampment for return. November 1999.

already taken place, rather than to significant additional return. But there are three notable problems that confound recovery in Bosnia.

The most salient problem is the lack of economic recovery, with the official unemployment rate among all ethnicities remaining upwards of 40%. In places where there is a returnee population, the returnees are the last to receive the few jobs that are available, and those who would establish a business of their own face prohibitive red tape and fees for permits. Where local development projects are implemented, priority is given to the dominant ethnicity.

Discrimination in education is an additional, serious problem. In the Federation, Croat and Bosniak pupils are taught separately in the 'two schools under one roof' system in more than 50 locations.⁵ In Croat-dominated Stolac, Bosniak pupils enter through the back door, and Croats through the front.

The separation between ethnicities that speak the same language and have nearly the same history and customs keeps tension simmering, and it is in this atmosphere, prevalent throughout BiH, that activists endeavour to unite people in the cause of citizens' rights and against corruption. During the period of refugee return, the most effective activists collaborated across ethnic lines and advocated for return in all directions. Today, the struggle against corruption and discrimination is likewise

most effective where returnees can unite with young members of the majority ethnicity. Instances of young people expressing their conscience have increased in recent years; Odiselj in Bratunac, although now no longer in operation, was one example of cross-ethnic collaboration,⁶ and in Prijedor, the organization Kvart⁷ boasts exemplary collaboration between intelligent, sincere young Serbs and returnee activists.

It is difficult to be hopeful in BiH, where the Dayton straitjacket reinforces separation and the country's leaders continue to implement their predecessors' war goals by quasi-legal means. Ultimately, recovery will come when a new generation of domestic leaders applies itself to the well-being of the ordinary people. Just as important, change will not happen without the involvement of the mass of ordinary people, led by activists they can trust. With increased cooperation between returnees and open-minded local people of all ethnicities, true recovery can take place.

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1. I lived in BiH from mid-1997 to mid-1999, and have visited the country for extensive periods since then, as a researcher focusing on grassroots human rights campaigns – the campaign for return, and then other campaigns such as those for memorialisation and against discrimination.

2. Then director of Tuzla Canton's Office for Return of Displaced Persons.

3. Under the Bonn powers decreed in December 1997 by the Dayton-established Peace Implementation Council, the Office of the High Representative was empowered to promulgate laws for BiH, as well as to remove domestic politicians from office.

4. As of August 2015, the final results had still not been released.

5. See article by Perry V 'Wartime division in peacetime schools', pp26-7.

6. See <http://balkanwitness.glypx.com/journal2008-4.htm>

7. <http://centarazmladekvartprijedor.blogspot.co.uk/> (Bosnian only)

Human rights shortcomings of the Dayton Peace Agreement

Lisbeth Pilegaard and Jasminka Dzumhur

When a peace agreement guarantees the rights of certain groups but not all, limitations to the enjoyment of human rights are inevitable.

The Dayton Peace Agreement which ended the war in Bosnia and Herzegovina (BiH) established the rights of the country's 'constituent peoples': Bosniaks, Croats and Serbs. The result of this has been that anyone who does not identify themselves with these groupings is highly limited in their exercise of rights, leading to the marginalisation of specific categories of the population.

The United Nations (UN) Committee on the Elimination of Racial Discrimination highlighted this in 2006, expressing its concern that "the State and Entity Constitutions allocate certain authority to, and confer specific rights exclusively on, members of the 'constituent peoples' (Bosniaks, Croats and Serbs), and that persons not belonging to one of these ethnic groups are formally referred to as 'Others'." The Committee urged "that the State Party ensure that all rights provided by law are granted, both in law and in fact, to every person on the territory of the State Party, irrespective of race or ethnicity."¹

The country is still witnessing a number of returns, yet there are continued concerns for the security situation of 'minority returnees',² with allegations of harassment, intimidation and other forms of violence, including murder.³ Politicians also continue to use nationalist rhetoric, often directed against minority returnees.

Annex 6 and equality of access

Annex 6 of the Dayton Peace Agreement established a Commission on Human Rights comprising a Human Rights Chamber and an Office of the Ombudsman. Together, these two are obliged to investigate:

a) *alleged or apparent violations of human rights as provided in the European Convention for the*

Protection of Human Rights and Fundamental Freedoms and the Protocols thereto, or

b) *alleged or apparent discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status arising in the enjoyment of any of the rights and freedoms provided for in the international agreements... where such violation is alleged or appears to have been committed by the Parties, including by any official or organ of the Parties, Cantons, Municipalities, or any individual acting under the authority of such official or organ.*

The institution of the Ombudsman works to provide equal accessibility for all vulnerable, marginalised groups, and its annual reports indicate that IDPs still have difficulties accessing social protection and welfare, creating obstacles to their sustainable return.⁴ The division of responsibilities among different levels of government (state, entity, canton and municipality) in the area of economic and social rights obstructs access to those rights, with a lack of clarity as to where responsibility lies. The consequence is that progress in the protection of human rights, in establishing rule of law and in improving governance and economic development has remained static in BiH.

At the same time, although the difficult economic situation in BiH affects the country as a whole, it has a more severe impact on vulnerable groups such as minority returnees, the Roma and female-headed households. The lack of sustainable solutions for IDPs and returnees continues, as does widespread discrimination on the grounds of ethnicity, gender and political affiliation. Furthermore, post-war reforms of governance instruments

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and national legislation have been undertaken with little or no public and expert consultation and without sensitivity to the needs of vulnerable groups, including IDPs. Laws have often been pushed through without sufficient budgetary planning, with the result that rights are *de jure* prescribed but not able to be realised in practice.⁵ There is concern that many of the measures undertaken have actually resulted in an increase in poverty and slower economic development, which again will have more serious consequences for the most vulnerable groups.

Inadequate protection for vulnerable groups

Various UN treaty bodies (charged with monitoring implementation of the core international human rights treaties) have pointed out – in regard to access to economic and social rights by vulnerable groups – the lack of direct application of Conventions; the lack of programmes for reduction of unemployment, particularly among women; and inadequate mechanisms for monitoring and redress. Their recommendations, however, have not been taken into serious consideration by the BiH government. As a result, injustice and inadequacies in protection and fulfilment of the rights of these groups remain one of the main challenges in transitional justice in BiH.

Victims of torture, including survivors of sexual violence, are granted only minimal protection under the umbrella category of ‘civilian victims of war’ in entity laws. Female victims of sexual violence are even more vulnerable, and face serious economic, housing, social and psychological issues; their often multiple vulnerabilities are not adequately recognised by laws (e.g. on health care, IDPs, social protection, etc) nor addressed in practice.

Two of the causes are the absence of state-level legislation regulating the rights of victims, and the lack of harmonisation of those relevant laws that do exist. Access to health care for survivors of torture, including sexual violence, is limited to basic services (in the Federation) or connected to IDP status (in the Republika Srpska) but in both

entities the specific needs of these categories are almost entirely neglected. Psychosocial support and counselling are only provided by the NGO sector, which is not able to cover all the needs. Monthly support allowances can be shamefully low, and for some this can be a source of re-victimisation.

The situation of the group labelled ‘women war victims of sexual violence’ illustrates how multiple vulnerabilities are not adequately dealt with and thus how the state is failing to provide adequate reparation to victims. These are women who are additionally disadvantaged as female heads of household and IDPs and who were or are facing eviction from accommodation they were provided as IDPs. Due to the provisions of the Law on Refugees from BiH and Displaced Persons in BiH they were (or are) under pressure to return to their pre-war places of residence – where they may be exposed to additional trauma, including the possibility of having to face the perpetrators.⁶

The burden is placed on IDPs to show they have grounds for refusing to return, since the Law prescribes that they lose their IDP status if the conditions exist for safe and dignified return to the pre-war place of residence. However, the law does not define conditions for safe and dignified return, nor does it take into consideration that safe and dignified return for survivors of torture can require significantly different conditions from those for IDPs not suffering from multiple vulnerabilities. Moreover, every time the survivors face a new eviction they are additionally re-traumatised, and their marginalisation is reinforced.

Conclusion

There is a pressing need for a comprehensive assessment of the effects of implementation of the Dayton Peace Agreement on IDPs, with particular attention paid to the implementation of the recommendations of the UN treaty bodies and the Universal Periodic Review.⁷ A human rights-based approach should be used in all spheres of life in BiH, focusing on the needs of vulnerable groups and ensuring that returnees can access their rights relating

to social protection, health care, education, housing, employment and security.

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1. Report of the Committee on the Elimination of Racial Discrimination, 2006. Supplement No 18 A/61/18, para 31. www.refworld.org/pdfid/45c30ba90.pdf

2. Displaced persons returning to areas of origin where their ethnic group is now in the minority.

3. OSCE (November 2012) *Tackling Hate Crimes: An analysis of bias-motivated incidents in Bosnia and Herzegovina with*

recommendations www.oscebih.org/documents/osce_bih_doc_2012111310235235eng.pdf; European Commission against Racism and Intolerance (February 2011) *ECRI Report on Bosnia and Herzegovina (fourth monitoring cycle)* www.coe.int/t/dghl/monitoring/ecri/country-by-country/bosnia_herzegovina/BiH-CBC-IV-2011-002-ENG.pdf

4. (March 2015) *Annual Report on the Results of the Activities of the Institution of the Ombudsman for Human Rights of Bosnia and Herzegovina for 2014* www.ombudsmen.gov.ba/Dokumenti.aspx?id=27&tip=1&lang=En

5. The best example for this assertion is the Gender Law (text at <http://tinyurl.com/BiH-Gender-Law-2003>), which states that: “competent authorities shall undertake appropriate measures on all levels in order to implement provisions of the Gender Law,” including “the adoption of planned measures designed to achieve gender equality in all fields and at all levels of governance”. This has not happened yet.

6. www.brookings.edu/about/projects/idp/laws-and-policies/bosnia

7. www.ohchr.org/EN/HRBodies/UPR/Pages/BASession20.aspx

If women are left out of peace talks

Gorana Mlinarević, Nela Porobić Isaković and Madeleine Rees

The exclusion of women from the process of making peace in Bosnia and Herzegovina has diminished the prospects for sustainable peace. When will we learn that no peace can be sustainable and just without the active and meaningful participation of women?

The narrative of war commonly portrays women as victims only, taking away their agency and leaving them voiceless in the reconstruction of their country. However, women's experiences as victims of violence and women's active participation in peace making and peace building are not mutually exclusive, and both aspects need to be recognised when negotiating peace.

During the peace process that preceded the signing of the Dayton Peace Agreement in 1995 not a single woman participated, whether as lead mediator, witness, member of the negotiation team or signatory.¹ This absence of women in the formal peace process has had concrete consequences both for the society as a whole and also for women as a distinct group in the society and their ability to be recognised as agents of change in later processes.

In Dayton, the space at the negotiating table was open only to men who had the power of armed forces behind them. Under the pretence of securing human rights, those male elites succeeded in agreeing the formula for the division of territory. Today,

BiH is paralysed by the disfunctionality of the central state apparatus and the ethno-nationalistic politics that are the common drivers for the two entities created by Dayton.² There has been no serious attempt by the domestic political elite to include women's perspectives in discussions regarding constitutional reforms, nor were women able to get support from the international community involved in facilitating these talks. The rationale – or excuse – is that women are *de facto* included through participation in BiH political and institutional life, including their membership of political parties. However, the reality is different, and women are not sufficiently or adequately represented.

The absence of women during peace negotiations is not unique to BiH. In 2012 UN Women published a review of 31 peace processes, showing that only 4% of peace agreements had women as signatories. More recently, at the Geneva II peace talks for Syria, despite support from states and international NGOs and the existence of UN Security Council Resolution 1325 (UNSCR 1325) on

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Michael Petrovic/mojprijedor.com

'Mothers of Prijedor' at a demonstration marking International Day of the Disappeared, 30th August.

women, peace and security,³ Syrian women were kept out of the peace talks. Not only is this patently an affront to international legal obligations but it is also quite simply a tragic waste. Yet, when prominent women's international and local Syrian organisations asked the UN to ensure the inclusion of women in the Syrian peace negotiations in 2014, they were told that the "political situation is complicated". We know that. But the solution is not to perpetuate the divisiveness that led the country into war in the first place. Research clearly shows that the only peace treaties that have brought sustainable peace are those which have been drafted with the participation of women and with the clear inclusion of a gender analysis in drawing up the framework for the conclusion of conflict, for transition, and for the future path of the nation.⁴

Creating space for inclusion and participation

Sharing women's experiences concerning peace negotiations and post-war life has become an imperative for feminist peace activists in order to create spaces for women's meaningful inclusion and active participation in the making of peace. Since

2013 a number of women's organisations and women activists in BiH, facilitated by the Women's International League for Peace and Freedom, started to work to counteract the exclusionist mentality of the political elites through an initiative called 'Women organizing for change in Syria and Bosnia and Herzegovina'. The starting idea was that the hard lessons learned by Bosnian women – both during the war and afterwards – need to be analysed and used to develop new, improved strategies for the active and meaningful participation of women in peace processes. This knowledge could be shared with other women in similar situations so that mistakes can be avoided and good practices considered and contextualised. At the same time, the opportunity is being used to find new paths towards the creation of a women's movement grounded in feminist principles in BiH that will be able to act beyond the ethno-nationalistic politics of division.⁵

The women activists from BiH identified successful stories but also many failures over the past 20 years. Most of the failures can be traced to two things: firstly, a flawed peace agreement, the purpose of which was to end the armed conflict but which did not contain the necessary elements for creating

sustainable peace, and, secondly, the fact that women and civil society had no part in negotiating that peace.

During the war, women were actively engaged in addressing the consequences of the violence and in activities vital to the survival of communities; they provided assistance to internally displaced people and to women victims of sexual violence; they went to work – braving snipers and shelling – to keep factories working; and some worked on cross-community dialogue in the midst of war. Yet there was no mechanism to carry those experiences across into the formal peace negotiations. The UNSCR 1325, which called for the active and meaningful participation of women in all phases of peace building and peace making, was adopted five years after the end of the war in Bosnia.

After the war women continued organising, some to demand the truth about missing family members, others to demand inclusion of women in formal politics. Some women also led the difficult process of return, often to sites where many of them had lost their close family members or been victimised themselves. They were the ones with hands-on experience of what it would take to make the return a sustainable one – not just the return of property (which was the main focus of the international community) but also access to economic, social and political rights.

Failure to engage with gender issues

Many of the problems that arose after the war could have been avoided had there been more serious political engagement – involving women's civil society representatives and gender-competent advisors – during the peace talks. Domestic violence, trafficking, health care, education, employment – these are all gender-related issues and should have been factored into a carefully planned transition in post-war BiH. Instead, issues recognised as being 'serious' and of ethno-national interest (such as education) or of particular importance for the political economy (such as employment and health care) were used to consolidate both ethno-nationalistic and neoliberal positions. Jurisdiction over these issues had already been divided between

the different ethno-nationalist elites at Dayton, without addressing any of the discriminatory or gendered aspects of these.

On the other hand, the issues recognised as exclusively 'women's issues' – and therefore not of particular importance for power or resources redistribution – were ignored at Dayton and left to be dealt with by women's organisations. The classic example is domestic violence, the least ethno-politically sensitive issue. BiH women were given space to tackle this, and the male political elite did not interfere substantively given that domestic violence portrays women as victims not as power holders or decision makers; although the causes of domestic violence were not addressed adequately, new and improved laws on domestic violence were passed, driven by women NGOs and carried into parliament by women MPs.

The issue of wartime sexual violence, however, remains a heavily politicised question. Nationalisms seek to profit from a narrative of the atrocities committed by others to "their women". This objectification and commodification were reflected in the way in which the peace process evolved, in particular in relation to access to justice. Instead of embracing an approach to address and ameliorate the situation of survivors that seeks also to have a broader, transformative impact on society, the reaction of parts of the elite has been at best ambivalent, at worst co-optive. Some of the issues raised by the women's groups related to the question of transformative redress. The response, however, was to 'grant' a form of compensation that was more a social support benefit than reparation to address wartime abuses, effectively forcing women into becoming dependent on social welfare. Even this form of compensation was not given to all survivors but only to those who live in the Federation and who fulfil a set of (problematic) criteria.

Consequently, over the past 20 years Bosnian NGOs have had to develop considerable expertise when it comes to provision of services such as medical assistance and psychosocial support. Official institutions, meanwhile, such as centres

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for mental health care and centres for social welfare, have done little or nothing to improve their capacity for provision of support and services. As a result, survivors today get support only through the NGOs, which remain dependent on foreign donor support to continue their vital work.

There is an inherent link between the way in which such services have been 'outsourced' and the achievement of real justice. The formal justice aspects of post-war BiH that were created (the International Criminal Tribunal for the former Yugoslavia, the Court of Bosnia and Herzegovina, etc) have provided a framework for criminal accountability but have failed in terms of providing comprehensive justice. The understanding of justice has been too narrow, confined to the prosecution and conviction of perpetrators (and in the beginning these were also the demands from the victims themselves).

Establishing these formal justice mechanisms, however, should have been complemented by paying real and serious attention to social and economic rights, and the post-war reconstruction of BiH should have been supported by a transformative transitional process. The identification of what was needed could only be done by an inclusive process, and the absence

of women made the failure inevitable. This continues to pose a challenge, as the space lost at the negotiating table has proven impossible to regain.

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1. UN Women (2012) *Women's participation in peace negotiations: Connections between presence and influence*, p4
<http://tinyurl.com/UNWomen-peace negotiations-2012>
2. The Dayton Peace Agreement created a decentralised Bosnia and Herzegovina, dividing the country between two entities, the Federation of Bosnia and Herzegovina and the Republika Srpska, with a weak central government.
3. www.refworld.org/docid/3b00f4672e.html
4. See for example Paffenholz T (2014) 'Civil Society and Peace Negotiations: Beyond the Inclusion–Exclusion Dichotomy', *Negotiation Journal*, Vol 30, Issue 1, pp69-91.
5. The reports from all discussions can be found at <http://womenorganizingforchange.org/en/events/retrospective-exercise/>

Interpretations of Annex 7: assessing the impact on non-returnees in the UK

Gayle Munro

Emphasising the crucial role of refugee returns to the future of Bosnia and Herzegovina risks minimising the agency of those who choose not to exercise their rights under Annex 7.

The majority of people from Bosnia and Herzegovina (BiH) living in the United Kingdom (UK) today made the decision to leave their home country and make a temporary or permanent new home in the UK as a direct result of the 1992-95 war in BiH. Those coming to the UK in the 1990s would have been part of one of three groups: those arriving as a part of the UK government's Bosnia Project (a

group made up of 1,000 people who had been identified by the United Nations High Commissioner for Refugees or the Red Cross as being particularly vulnerable, many of whom were former concentration camp detainees); those making their journey independently; or medical evacuees.

The reliability of quantitative data on migration to the UK prevents any accurate estimates on the numbers of people from BiH

still resident in the UK, although community representatives estimate the number to be approximately 10,000. Many of those who fled the conflict will have since returned – and it is of course entirely appropriate that, following a violent conflict, those who want to return ‘home’ should be able to exercise the right to do so. However, the question of choice or agency on the part of those who have had so much taken from them already is one which is interesting to explore, especially given the wider rhetoric on migration and asylum in the European (and wider) context.¹

Insistence on return

There are many who argue that the ‘success’ of Dayton rests on the implementation of Annex 7 and refugee return, and indeed the international community is keen to emphasise the importance of the return of IDPs and refugees. But it is interesting to consider the potential motivation(s) behind the insistence on the importance of refugee return.

Is such insistence, as some have pointed out, motivated by the desire to emphasise that the practice of ‘ethnic cleansing’ is not to be rewarded with territorial gains?² Could part of the desire for ‘successful’ refugee return be an attempt to assuage any residual guilt over the catastrophic results of the collective failure of the international community to intervene positively in BiH at an earlier stage in the war?

There is increasing reluctance on the part of many European governments to offer permanent refuge to those fleeing conflicts, and the practice during the 1990s was to offer ‘temporary protection’ to refugees from the Bosnian war (Germany and the UK being two examples). The international community presents return as crucial not only for the long-term success of the peace treaty but also for the eventual emotional well-being of those who were displaced. Is there a possibility, however, that the increasingly unforgiving immigration legislation of some European governments is contributing to the rhetoric around the importance of refugee return?

It is inevitable that discussions around reconciliation will be, to say the least, politically and emotionally charged, in a country where so many of those responsible

for causing so much pain have not been brought to justice. In that sense, the insistence on refugee return as being the lynchpin of a successful Dayton,³ while ostensibly aiming to ensure the protection of returning refugees, could be interpreted as having a more subtle and insidious sub-text. In post-conflict BiH and its neighbours, where meaningful reconciliation measures on the part of the perpetrators are few and far between, Annex 7 places the weight of expectation on the victim. Survivors of the war are already very familiar with the guilt of the living. In placing such an emphasis on their return and the return of others like them, there is the danger of increasing the emotional burden on those who may have already had their resilience tested not only by the horror of the war itself but also by the sometimes considerable stresses of the experience of migration.

Of those refugees from BiH whom I interviewed during the course of my research,⁴ the average length of wait for a decision on their migration status was seven years, with the longest wait being thirteen years.⁵ Interviewees spoke of the feeling of intense physical and emotional displacement on realising that, after leaving homes shelled or burned to the ground or having been forced to renounce any rights to their properties, what was on offer in the country of ‘refuge’ was temporariness and uncertainty; they faced years in limbo without the right to work or the documentation necessary to facilitate temporary return without potentially jeopardising the outcome of their asylum claim.

It could be argued that the belief that refugee return is essential for the future of BiH paradoxically risks overlooking the rights of some of those most vulnerable refugees. It would after all be difficult to underestimate the accumulated and corrosive effect on the mental and emotional health of a refugee who, after surviving the war and its aftershocks and the UK immigration system, is then subjected to the emotional guilt-trip which the pressure of the ‘refugee return is essential for Bosnia’ argument could trigger.

While implementation of Annex 7 is crucial for the protection of the rights

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of those refugees and IDPs who do wish to return, it is also important that the rights of those who have chosen to make their homes elsewhere are recognised. Acceptance of the decision of these refugees not to return would be a positive step towards recognising and celebrating that refugee 'agency' so often lamented as missing in studies of forced migration.⁶

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The content of this article does not necessarily reflect the position of The Salvation Army.

1. See *Forced Migration Review* issue 51 (forthcoming December 2015) on 'Destination: Europe'.
www.fmreview.org/destination-europe

2. Dahlman C and Tuathail G Ó (2005) 'The legacy of ethnic cleansing: The international community and the returns process in post-Dayton Bosnia-Herzegovina', *Political Geography* 24(5): 569-599. www.sciencedirect.com/science/article/pii/S0962629805000223

3. For example, see 'Albright urges Bosnian refugee return', BBC News, 31 August 1998 <http://news.bbc.co.uk/1/hi/world/europe/161970.stm> and 'Bosnia: Dayton will collapse unless refugees return', November 1997 <http://refugeenews.tripod.com/nov97bosnia.htm>

4. The research on which this article is based was carried out in 2008-13 while the author was a doctoral candidate at University College London's Department of Geography. Research participants had been living in the UK for an average of 15 years at the time of the project; the vast majority had arrived between 1990 and 1995.

5. Some were granted refugee status while others had their temporary protection extended and then were eventually given leave to remain permanently.

6. Turton D (2003) 'Conceptualising Forced Migration', RSC Working Paper No 12, Refugee Studies Centre, University of Oxford.
www.rsc.ox.ac.uk/publications/conceptualising-forced-migration

The role of remote voting in encouraging return

Djordje Stefanovic and Neophytos Loizides

Once there is a genuine possibility of going home, what influences a forced migrant's decision to return to a pre-conflict residence, often in the face of very difficult conditions? What role can remote voting play?

Victims of 'ethnic cleansing' have returned home in significant numbers all over Bosnia and Herzegovina (BiH) but no municipality has been as successful in peacefully reversing ethnic cleansing as the Drvar region in western BiH. In 1991, 97% of Drvar's 17,000 inhabitants were Serbs. After the September 1995 offensive by Croat forces, the only original inhabitants who remained were 83 older people in isolated villages. However, by 2000, Serb returnees represented 70% of the local population, making Drvar the first municipality in which the pre-war majority was restored via peaceful returns.¹

Not only did former residents from Drvar region start returning in large numbers before the country-wide turn of the tide in 1999-2000 but they won municipal elections, gained significant representation in the police force and local administration, and recovered the demographic majority status they had had before the war. This was achieved despite bitter resistance to return from some quarters.

This article combines findings of fieldwork conducted in Drvar region in 2011 with data collected in BiH in June and July 2013,² including data on both currently displaced people and returnees. Survey-focused work on displaced persons is relatively rare, for a number of reasons. It is frequently risky in terms of the personal security of interviewees, is politically sensitive and is difficult to carry out with a representative sample of displaced respondents. In conflict zones, forced migrants represent vulnerable but mobile populations; while their vulnerability makes them extremely important for social science enquiries, their mobility makes it equally challenging to determine representativeness in the sampling procedures. Such studies consequently often focus on available populations in designated refugee camps or neighbourhoods, overlooking those displaced persons who are more integrated within the broader population. In the end, governments, international organisations

and NGOs are often forced to make decisions without consulting vulnerable groups.

Reflecting the importance both of security concerns and of memories of home in making decisions about return, our data indicates that women and those who experienced wartime victimisation are less likely to return. Likewise, older Bosnians with positive memories of pre-conflict inter-ethnic relations are more likely to return than younger persons or those with negative memories. Better-educated forced migrants are less likely to return, which is probably related to their easier economic integration in their new place of residence. Young women are the least likely to return, which might be related to greater opportunities for women in urban Bosnia (or Western countries of exile) compared to small-town or rural Bosnia. Finally, persons displaced from areas experiencing high levels of return are more likely to return themselves.

The Bosnian return experience points to several limitations of internationally sponsored peacekeeping. Even in the townships where community effort led to successful returns, the mass return was generally not followed by well-designed and well-funded local economic development programmes. Consequently, many returnees left again but this time primarily for economic reasons – to find jobs. While BiH's cities were once genuinely multi-ethnic, they are now overwhelmingly mono-ethnic. However, there have been examples of successful returns in smaller, mono-ethnic townships or villages, most notably in the Drvar region.

The Coalition for Drvar

The Drvar association of displaced persons (the Coalition for Drvar) was formed when it became clear to those wishing to return that the authorities in different parts of BiH were not truly interested in implementing the right of return. One of the first achievements of the Coalition for Drvar's leaders was to convince followers to vote in their pre-war hometowns, against the wishes of those who were counting on the votes of displaced Serbs in order to consolidate their own control in the parts of BiH which were now predominantly Serb.



Mixed groups of Serb and Croat returnees living in Bukve village, 2001.

Annex 3 Article IV of the Dayton Peace Agreement stipulates that “a citizen who no longer lives in the municipality in which he or she resided in 1991 shall, as a general rule, be expected to vote, in person or by absentee ballot, in that municipality.”³ This electoral provision permitted refugees and internally displaced persons (IDPs) to cast absentee ballots in their pre-war home cities and in 1997, for example, Mile Marčeta was elected by absentee ballot as mayor of Drvar. Described by the international media as a “symbol of hope in a land of hate”, the mayor convinced around 1,600 to 2,000 displaced persons to accompany him back to the municipality. Despite Croat resistance, the assassination of two elderly returnees and an assassination attempt against Marčeta himself, forced migrants managed to re-establish themselves on their land. The Coalition for Drvar not only

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helped reverse ethnic cleansing but also played a leading role in mobilising support from the international community as well as locally among the multi-ethnic country-wide Coalition for the Return of the Expelled.

The theme poster of the Coalition for Drvar was a large yellow map of all Bosnia and Herzegovina and a picture of a house with a little chimney. “*Hocu kuci*,” it says. “I want to go home.”

The Drvar experience highlights the importance of remote voting for successful returns. In Drvar many IDPs have continued to have a vote in their pre-conflict municipalities, even while in exile. As per Article 20.8 of the Bosnian Election Law, distant voting for displaced persons will remain in place until decided otherwise by the UN High Representative or the Parliamentary Assembly of BiH.⁴ Voting

rights was a key element of the Dayton architecture – in contrast to other UN-led peace mediations such as the Annan Plan for Cyprus which included significant restrictions on the political rights of displaced persons. To prevent situations arising in post-conflict societies where municipal authorities represent exclusively either new or old inhabitants but not both, peace settlements should combine remote voting with – what was missing from Dayton – power-sharing systems at the local level.⁵ Such institutional mechanisms could allow refugees and IDPs to maintain financial, institutional and political ties with their home region.

Could cases of successful return in BiH be replicated in other post-conflict societies? While some conditions appear to be unique to Bosnia and hard to replicate – such as the massive presence of the international agencies in a *de facto* protectorate – others might work elsewhere. If a post-conflict settlement enables forced migrants to vote in local elections in the place of displacement (by a remote voting mechanism), forced migrants might be able to peacefully regain a stake in local political institutions and be encouraged to return.

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1. International Crisis Group (May 2000) *Bosnia refugee logjam breaks: is the international community ready?* ICG Balkans, Report No 95. <http://tinyurl.com/ICG-Bosnia-May2000>

2. The data collection was done by Sarajevo-based Ipsos BH, with funding provided by the Social Sciences and Humanities Research Council of Canada, as part of ‘The Way Home: Peaceful Voluntary Return Project’. For an earlier study focusing on community returns see Stefanović D and Loizides N (2011) ‘The Way Home: Peaceful Return of Victims of Ethnic Cleansing’, *Human Rights Quarterly*, 33 (2): 408-430.

3. See www.refworld.org/docid/3de495c34.html

4. See www.izbori.ba/Documents/documents/English/Laws/Election_Law_of_BiH-eng.pdf

5. See www.refworld.org/docid/3ae6a6e84.html

Home after Dayton: IDPs in Sarajevo

Gruia Badescu

The experiences of displaced people in Sarajevo show that living in a place that people perceive to be safe and to provide opportunities can be more desirable than returning to one's place of origin. Participatory urban projects can help foster the sense of community which is still missing.

It is estimated that about 90,000 current residents of Sarajevo, the capital of Bosnia and Herzegovina (BiH), lived elsewhere in BiH before the war. Some came to Sarajevo to seek work in the years after the war but for many life in Sarajevo began as a result of displacement during the war. In many places around the world, urban IDPs as a category with a specific profile are ignored by local authorities or in some cases are singled out negatively. The experience of displaced people who now live in post-Dayton Sarajevo can help inform action and policy both in BiH and in urban displacement contexts elsewhere.

was also linked to a view that people are rooted in a particular place. This is what Roger Zetter calls the “myth of home”, where the emphasis is on the geographical location of a place that is considered to remain ‘home’ no matter what. As a result, in post-Dayton BiH, there was an emphasis on the restitution of property and return. At first glance, this was successful, as many people reclaimed their property and BiH witnessed over a million returns. In practice, however, many recovered their property and then sold it to others, mostly to those of the new majority group in the respective localities.



Sarajevo

Annex 7 of the Dayton Accords stipulated the right of IDPs to return specifically to their “homes of origin”, rather than the more common UNHCR “return to country of origin” framework. This specificity was grounded in the desire of international actors to reverse the ‘ethnic cleansing’ which they did not stop during the war. In addition, it

Seeking cool ground

The alternative to this ‘home return’ approach is a ‘looking for cool ground’ approach where people’s decision to remain elsewhere is connected to feelings of safety and the opportunities they find in their new locations.¹ For many displaced Bosnians, the return to their pre-war homes would imply living as a minority amidst another ethnic group, and that could instil feelings of insecurity or fear of conflict. Furthermore, with the collapse of the socialist industrial economy, this return would imply a choice between unemployment and living off the land, which the younger generations are not so inclined to do.

Places that represent ‘cool ground’, on the other hand, would provide security, in the sense both of being shielded from possible animosity, resentment or conflict and of having better prospects for employment. While for some this cool ground was a foreign country, others found it in big cities like Sarajevo, where the economy was better than elsewhere in BiH. Living among people with whom one shares a language and often a religious and overall cultural code was preferable for some to

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living elsewhere and having to negotiate different languages and cultures.

Most displaced people in Sarajevo whom I interviewed told me that they feel at home in the city.² For some, feeling at home was a matter of spending enough time in a place and getting accustomed to it. For others, feeling at home meant being surrounded by supportive and engaging social networks. For some, Sarajevo became home as it is a relatively large city and thus a place both of anonymity and of discovery. For others, however, the size of the city caused loneliness and hampered a sense of community.

One obstacle to feeling at home in Sarajevo is a perception of animosity and arrogance shown by the pre-war local population. As the majority of the displaced were of the same ethnicity and religion as the new demographic and political majority in the city (i.e. Bosniaks), one might expect that their integration would be smooth, facilitated by the authorities and embraced by the local population. What actually happened defies this assumption. Locals invoke the notion of a Sarajevo spirit, *Sarajevski duh*, to express the refined urban culture of Sarajevo, and depict the newcomers as rural, primitive, traditional, religiously radical – all traits assembled under the umbrella of ‘uncultured people’, *nekulturni*, who are unable to adjust to the city.

A number of the urban IDPs whom I interviewed discussed the perceived differences between the rural (‘uneducated’) and urban (‘educated’) newcomers:

“Taxi drivers talk about all those people who came here: ...[the newcomers] are uneducated, they don’t know how to behave, they throw rubbish from the windows and not in the bins, and all these stupid things. I am sure there are some like that but that does not make a pattern. I am educated, I do not throw rubbish out of my window....” (Vedad, 44)

“There is a lot of animosity. People believe that being born in some place is more noble. But then you ask – [...] you think that just by being born here, you are better?” (Nihad, 47)

The persistence of divisions within Sarajevo’s urban population indicates that providing housing,³ employment and support

networks needs to be complemented by community development. The divisions between groups can be moderated by concentrating on common challenges and opportunities, by working on a common vision to benefit all. One area where this can happen is urban planning and development. Interviews reveal that for most residents, displaced or not, the problems of urban living are similar – relating to employment, traffic, urban amenities – and working together to address these issues could help to cement the feeling of community.

Humanitarian actors need to pay more attention to urban issues and the needs of urban IDPs. One possible avenue of action would be for humanitarian actors to advocate to local authorities the need to involve local residents of all backgrounds – including IDPs – in small community projects (working with local community NGOs) and in wider participatory planning and development schemes. It is important, however, not to single out IDPs in poor communities and thereby risk creating animosities between the host community and IDPs; any projects should rather address the overall structural problems of the area and the concerns of all residents.⁴ Such an approach will foster people’s sense of belonging and facilitate a more inclusive urban vision.

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1. See Allen T (Ed) (1996) *In Search of Cool Ground: War, Flight & Homecoming in Northeast Africa*. James Currey; see also work by Stef Jansen on Bosnian IDPs.

2. In 2013–14, I interviewed urban IDPs in Sarajevo from a variety of backgrounds, urban and rural, who either came directly to Sarajevo as IDPs or who were refugees abroad first. Many thanks to CESI for facilitating this research and especially to CESI director Dr Selma Porobic for her support. My research on IDPs did not include East Sarajevo (in Republika Srpska); for a study of Sarajevo Serb IDPs in East Sarajevo see Armakolas I ‘Sarajevo No More? Identity and the Experience of Place among Bosnian Serb Sarajevans in Republika Srpska’, in Bougarel X, Helms E and Duijzings G (Eds) (2007) *The New Bosnian Mosaic: Identities, Memories and Moral Claims in a Post-War Society*. Ashgate.

3. Housing availability was, unusually for IDPs, not a problem in Sarajevo at the end of the war as most of the Sarajevo Serbs had fled the city, vacating properties. More, low-cost informal construction took place on the hills surrounding the city.

4. Known as area-based integrated urban development.

The compound effects of conflict and disaster displacement in Bosnia and Herzegovina

Wesli H Turner

Some IDPs living in protracted displacement in Bosnia and Herzegovina, such as many Roma IDPs, were especially vulnerable to the effects of the May 2014 flooding and landslides.

Over a few days in May 2014, Bosnia and Herzegovina (BiH) experienced the heaviest rainfall reported in 120 years. The deluge led to the flooding of the rivers Bosna, Drina, Una, Sava and Vrbas and their tributaries, damaging 43,000 homes and triggering landslides that destroyed a further 1,952 homes in 81 municipalities.¹ The floods affected more than 1.5 million people (nearly 39% of the population) and displaced around 90,000 people.

Many of those displaced by the floods were IDP returnees, formerly displaced persons who had integrated locally, and IDPs still living in protracted displacement following the conflict, and already vulnerable groups such as victims of wartime sexual violence and landmine victims. Once again they were forced to flee their homes, having to find refuge with family or friends or in temporary accommodation facilities.

IDPs in hazard-prone areas

The prioritisation of return – by the state and the international community – between 1999 and 2005 exacerbated the vulnerability of some IDPs, especially Roma IDPs. Those who did not want to return and did not benefit from financial assistance often settled in at-risk areas near riverbanks prone to flooding or on hillsides that were susceptible to landslides, simply building on vacant land. Without ownership or other rights to their property, many such IDPs are under constant threat of eviction by authorities. In addition, the use of cheap construction materials and unskilled craftsmen has meant that it is the most vulnerable IDPs and returnees from the conflict 20 years ago who are again prone to displacement, this time by natural hazards.²

The National Action Plan on Roma Housing calls for the legalising of informal

settlements and illegally built houses and a more favourable legislative framework but has yet to be fully implemented³ and there is still no state-level regulation on the legalisation of informally built housing units. Resolution of property disputes for the land on which such houses are built remains the responsibility of the two ‘entities’ and Brčko District at the municipal/cantonal level.

At the same time, newly displaced Roma continue to face discrimination in accessing assistance. In interviews conducted with 373 displaced Roma families in 20 municipalities, 45% said their homes had been destroyed by flooding or landslides in 2014.⁴ Those who had built on public land without permission or building permits are not eligible for reconstruction assistance due to the legal requirement to provide proof of ownership of a destroyed property. It is not clear what housing assistance, if any, there will be for informal settlers and other non-owners.

Prioritise according to need, not cause of displacement

BiH received aid from bilateral donors, international organisations and the European Union (EU) to respond to the flooding-induced displacement in 2014. As part of this, facilities to house those who were unable to remain in their homes were identified. Here, in the context of another programme (CEBII⁵) funded by the Council of Europe Development Bank to close all collective centres, it became important to distinguish between shelter for IDPs displaced by the conflict and those displaced by the floods and landslides. The new shelters became known as ‘temporary accommodation facilities’ (TAFs) so as not to confuse them with the ‘collective centres’ which continue to house IDPs from the conflict.

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Photo taken by a Slovenian helicopter crew as they provide assistance to people affected by floods in Bosnia and Herzegovina in 2014.

Where a country experiences multiple waves of displacement, the most vulnerable should be prioritised. After the initial surge of post-flood assistance, many organisations became worried that displacement caused by the floods would undo progress made in returns and local integration of IDPs from the conflict, delay work to improve living conditions of IDPs in collective centres, and damage donor commitments to facilitate ‘conflict returns’ (if donors decided to assist those displaced in the more recent disaster rather than those who were displaced 20 years ago).

This last concern was not unfounded. In the immediate aftermath of the floods, the Ministry of Human Rights and Refugees and the EU approved a diversion of funds allocated to end displacement caused by the conflict towards those displaced by the floods and landslides. There was an emphasis on vulnerable populations that included ‘Roma and displaced communities’ but the requirement to show proof of ownership remained (in order to be eligible for reconstruction assistance) and there was uncertainty as to whether previous assistance provided to conflict IDPs would affect their eligibility for flood-related assistance. There was no official guidance for donors or government authorities on this matter.

Eventually, the Ministry of Displaced Persons of the Federation of BiH – one of the two entities governing BiH – shifted funding intended for conflict IDPs and used it to prioritise people who had been doubly displaced, once by conflict and

then again by the floods and landslides. The biggest question surfaced around reconstruction assistance for housing that was built informally as there is still no legislation or legal regime in place to provide reconstruction assistance to those who have built informally – primarily Roma IDPs.

Some progress has been made in that municipalities are now able to allocate public land free of charge to persons who lost their homes in the landslides. Roma who meet the eligibility requirements can request such assistance, like everyone else, but are still required to provide some proof of ownership, which many do not have. The distribution of free land by the municipality does not adequately address their housing needs or the specific challenges – such as documentation – faced by the Roma community. Innovative approaches to circumvent all of these challenges are needed.

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Prijedor: re-imagining the future

Damir Mitrić and Sudbin Musić

Public memorialisation in Bosnia and Herzegovina today is an act of remembering not just those who died in the conflict but also the multi-ethnic reality of earlier times. Articulation of this, however, is being obstructed in cities like Prijedor.

The political elites of post-Dayton Bosnia and Herzegovina (BiH) have carefully patrolled their respective histories of 'what happened' during the war, with school curricula, public broadcasting, public events and memorial sites on all sides mostly narrating an un-nuanced story of victim and perpetrator. Imposing an embargo on memories of pre-war BiH has become an important component of this.

In the north-western town of Prijedor, a systematically executed policy of ethnic cleansing resulted in the killing of 3,173 residents at the hands of local Serb authorities, with a third executed in the three infamous concentration camps of Omarska, Karaterm and Trnopolje.

The signing of the Dayton Peace Agreement in November 1995 left Prijedor within the jurisdiction of the Republika

Srpska (RS), with the immediate post-war political leadership dominated by those who had 'ethnically cleansed' the town of its non-Serb population.¹ Annex 7 of the Dayton Peace Agreement established the right of all refugees and displaced persons to return freely to their homes of origin, and was generally successfully implemented in Prijedor, in contrast to other parts of BiH; between 1998 and 2003 some 10,000 Bosniaks decided to return to the place of their birth.

However, only 20% of the original Bosniak population has permanently returned. Until 2007, reclaiming and rebuilding destroyed private property had been the primary driver of return. Thereafter returns stagnated, and many of the returnees decided to move across the Inter-Entity Boundary Line into the Bosniak-Croat Federation or to join their relatives in exile across the globe. Their

beautifully renovated houses stand empty in Prijedor for most of the year. With an ageing population and an economy that offers no opportunities for young people – who are increasingly abandoning the town – Prijedor faces the prospect of being emptied once again.

Politics of memorialisation

Equally worrying is the politically sanctioned culture of denial of the war crimes committed against the non-Serb population. Local



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authorities regularly use their political power to interfere with or prohibit public memorialisation. Most prominently, in May 2012 Mayor Marko Pavić instructed the police to stop planned commemorations marking the twentieth anniversary of the killing of 266 women and children in Prijedor and prohibited a further planned gathering on 10th December that year. Meanwhile, survivors of the notorious Omarska concentration camp are still waiting for an official site of remembrance.

In 2004 the local government sold the industrial complex of Omarska to the world's biggest steel producer, ArcelorMittal Steel, which has then denied access to the former concentration camp premises for commemoration purposes on a number of occasions. Most controversial was the company's refusal to allow survivors access to the Omarska complex in 2012 to mark the twentieth anniversary of its creation as a concentration camp in 1992. Only after intense public pressure did the management finally allow the proceedings to go ahead.

The premises of the Omarska complex stand for more than just the killing fields of a bloody war. As the backbone of pre-

war Yugoslav Prijedor, they also embody memories of pre-conflict times. They were places where neighbours worked side by side to secure the prosperity of the municipality, a prosperity shared by all. Thus memorialising what happened in 1992 is also an act of remembrance of the earlier multi-ethnic reality – and it is that re-imagining of the past that local authorities are determined to deny.

The impossibility of reconciling unity and ethnic cleansing lies at the heart of the issue that today's BiH is facing. How could my neighbours have mutated into my killers? The question may be impossible to answer but its articulation in public spaces is a necessary foundation for a future that encompasses all the country's peoples.

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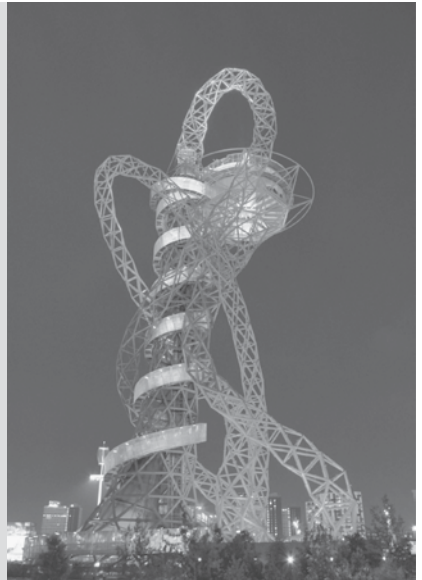
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ArcelorMittal Orbit

In a rather bizarre twist, in May 2012 – one month before the opening of the London Olympic Games – survivors of the Omarska camp accused ArcelorMittal Steel of using iron ore deposits from the Prijedor mine in the building of the 115-metre-high sculpture *ArcelorMittal Orbit* for the Olympic Park in London. Claiming that the iron ore had been dug up from the Omarska premises containing bodies of still-missing Bosniaks scattered in unmarked mass graves (a claim the company denied), survivors appropriated the sculpture as their Omarska memorial-in-exile.

For Bosniak survivors, the *Orbit* expresses the grief they are unable to share publicly in their home town, and casts a longer shadow back to a time when they could never have imagined the loss to come. Its proximity to the London Olympic flame and even its shape trigger memories of the Sarajevo Olympics in 1984 – when today's 'victims' and 'perpetrators' were neighbours in a country which proudly looked outwards to the world to showpiece its multi-ethnic society. The *Orbit* also represents the economic devastation of Prijedor experienced by today's unemployed returnees; the iron ore which once was the safety net for a prosperous town is now controlled by a multinational company.



Mass evacuations: learning from the past

Caelin Briggs

Twenty years after the evacuations from the Bosnian 'safe areas', humanitarian continue to struggle with dilemmas around humanitarian evacuations.

Between 1993 and 1995, humanitarian actors made multiple unsuccessful attempts to evacuate civilians from the Srebrenica enclave. On July 11th 1995, Serb forces broke through the southern perimeter of the town, triggering a mass movement of 25,000 people desperate to escape before the enclave fell. Srebrenica had been declared a "safe area" by the United Nations (UN) but as the Serb forces pushed through the streets, neither the peacekeepers nor humanitarians could protect the civilian population.

Evacuations and 'population exchanges' were a regular feature of the war in Bosnia and Herzegovina, and were often facilitated by international organisations whose concerns about complicity in ethnic cleansing were outweighed by the need to find any means to protect people from greater harm. Many of the facilitated movements from the safe areas in July 1995 were as much forcible transfers as they were evacuations, and shared similar, chilling characteristics: men were separated from their families and detained, convoys were stopped and searched, and trucks containing men were diverted and thousands of these men were never seen again.

Parallels: the Balkans and Syria

Twenty years later, humanitarians continue to struggle with many of the same challenges in evacuations and siege environments. In February 2014, the UN was asked to facilitate an evacuation from Homs, Syria, the terms of which had been decided by the parties to the conflict largely without the involvement of the humanitarian community. Among the conditions imposed was a requirement that humanitarians would not evacuate any men between the ages of 15 and 55. While humanitarians were eventually able to negotiate around that particular condition, they were not able to prevent hundreds of men from being detained for questioning

and interrogation. The longer these men remained in captivity, the more painful and obvious the parallels to the Balkans became.

Evacuations of civilians from besieged areas can be a critical protection measure in the face of imminent violence. In some cases, an evacuation may be the only option available to save lives. But often, if not always, evacuations are also defined by grave dilemmas. There may be no good outcome available, leaving humanitarians to try to determine the least damaging way forward in the midst of only bad choices. With this in mind it is important for humanitarians to reflect on lessons from the Balkans and other evacuations in the succeeding two decades in order to develop strategies to minimise harm. These lessons include:

Don't wait until it is too late to deal with the tough issues: If potential dilemmas and complications are not discussed until an evacuation is imminent, staff on the ground will be left to make fast decisions on their own. At an institutional level, organisations should discuss common dilemmas and develop guidance for their staff.

Do a careful mapping of potential dilemmas: Mapping potential dilemmas is critical in helping to manage complications that may arise during an evacuation but, perhaps more importantly, it can also help humanitarians decide whether to proceed with an evacuation in the first place. In some circumstances, the risks associated with an evacuation may outweigh the likely benefits. The determinant is not the dilemma itself but the level of risk it carries with it, and how this ranks against the immediate imperative to relocate the population.

Employ a systematic approach to risk analysis: Once a contextualised list of

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possible dilemmas has been developed, humanitarian actors should chart the severity of each dilemma, how the risk compares to the urgency of the evacuation, and whether there are possibilities to mitigate the risks. This assessment will help the decision on whether to proceed with the evacuation and, if so, it will support humanitarians to develop contingency plans for the best-case, worst-case and most likely scenarios.

Sharing lessons: For high-risk interventions like evacuations, there is still some reluctance to speak forthrightly about what went well and what did not. Given that many of the same dilemmas and challenges arise time and again, it is imperative that we share lessons learned.

Conclusion

If civilians are being evacuated, it means political leaders have failed to reach an agreement, states have failed to protect their citizens, and parties to the conflict have failed to uphold their obligations under international humanitarian law. Evacuations are likewise not a solution – they are a temporary, life-saving measure to be pursued only when other options have been exhausted.

It is helpful to recall this in order to lend perspective on the role of humanitarians in such a context. There is a tendency to see a humanitarian evacuation as a success and solution to a crisis, when in fact it is neither. At their best, evacuations can provide short-term, life-saving protection and buy time for leaders to find a solution, but an evacuation in and of itself can neither prevent nor respond to a breakdown of protection in the long term.

Humanitarians have an imperative to take every possible measure to promote the safety and well-being of conflict-affected communities, including through evacuations where necessary. But, ultimately, the responsibility for finding a permanent resolution to the crisis continues to rest with political leaders and the state.

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The Norwegian Refugee Council has recently produced a guide called *Considerations for Planning Mass Evacuations of Civilians in Conflict Settings*. Please contact NRC Geneva for more information nrcgeneva.policy@nrc.ch

Bosnia revisited: a retrospective on the legacy of the conflict

Brad K Blitz

It is instructive to review the legacy of both the conflict in Bosnia and Herzegovina and the post-war settlement and experience in order to appreciate how this European conflict set the stage for major institutional developments in the field of humanitarian protection, and how, after 20 years, the lessons which emerged from this experience are being ignored.

While more than 1.2 million Bosnians still have not returned after fleeing the conflict, the vast majority successfully received refugee status in countries of asylum. Germany and Austria took in hundreds of thousands of refugees, most of whom were given temporary protection for four to five years and later either returned to Bosnia or moved on to third countries such as Australia. Other countries such as Sweden,

the United States, Canada and the United Kingdom granted refugee status, though in smaller numbers. As a result, Bosnia and Herzegovina (BiH) established a large and important diaspora which its government has turned to in the hope it may assist with the economic revival of the country.

In addition to providing international protection, the international community invested heavily in a programme of political

reconstruction. It created a Human Rights Chamber, an International Criminal Tribunal for the Former Yugoslavia (ICTY) and, later, special war crimes courts operating within the region. It also established the Office for the High Representative and saw institutions pass from UN to European control during a phase of marked supranational development and European integration. While Europe impressed its design on the former Yugoslavia – for example by pressing for greater regional cooperation and by drafting multi-staged roadmaps that would, if followed correctly, open the door to European Union accession – BiH emerged from the war less as an independent state and more visibly an international protectorate.

The most glaring example of Western political interference was the imposition of a new constitutional order by means of the Dayton Peace Agreement, which saw the re-configured state of BiH, with its proliferation of cantons and its division into

two ‘entities’ (the conjoined Croat-Muslim Federation of BiH and a Bosnian Serb mini-state, Republika Srpska) resemble a cross between Belgium and Switzerland. This constitutional order, which preserved the ethnic division created by the war, was later to be condemned by the European Court of Human Rights in its ruling on *Sejdić and Finci v. Bosnia and Herzegovina* for denying Roma, Jews and others from the possibility of assuming the highest political office.

Independent post-war BiH looked considerably different from the multi-ethnic and largely secular republic of the former Yugoslavia. The war had robbed it of its young, deprived it of a manufacturing base and left many without any hope for a better future, while the war criminals who had incited and participated in the war were protected in neighbouring Serbia and, to a lesser extent, Croatia. It was only the prospect of European accession for Croatia and later Serbia that gradually saw these two countries



View of Sarajevo from its ruined Parliament building, 1996.

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distance themselves from the ethnic Serb and ethnic Croat populations in BiH. While Croatia joined the European Union in 2013, and Serbia is a candidate country awaiting accession negotiations, BiH is a generation away from Europe. A key fault line remains the effective partition of the country.

One surprising development is the economic progress of the Republika Srpska, which experienced extreme poverty just ten years ago and now enjoys relative prosperity, thanks to the country's mineral wealth. One important consequence of this has been the further empowerment of those in power who place ethnic 'purity' above other considerations, who have done little to recapture the human capital lost during and after the war years but insist rather on full secession.

Learning from history

Twenty years on, the return project is ready for review. While a commitment to return was formally written into the Dayton Peace Agreement under Annex 7, the untold story of BiH's post-war independence is the large numbers of nationals who returned but then left again to go back to their host countries or to re-emigrate to Australia, the US and Canada. The suggestion that return would be a 'durable solution' is at odds with the experience of post-war Bosnia. There are, nonetheless, some important lessons one can take from the country's recent history, both during and since the war.

First, the experience of those who, in the early stages of the war, either took refuge in private accommodation as internally displaced persons or who fled abroad contrasts markedly with those who sought protection from international agencies, including the United Nations High Commissioner for Refugees. And all of these had experiences which were sharply differentiated from those of people who stayed where they were, often under siege conditions. Overwhelmingly, those who sought refuge in temporary accommodation rather than in camps were integrated much faster, whether in receiving states or within BiH. The fact that

BiH's collective centres remain inhabited by people displaced by the conflict, some twenty years later, is a shameful indictment of a policy effectively of encampment.

Second, those who held out hopes of justice, both through the International Court of Justice and the special tribunals, including the ICTY, have been sorely disappointed. BiH's neighbours refused to hand over the most significant perpetrators of violence and incitors of hate. The lure of justice is a powerful and important motivating force for refugees and victims of conflict but it must not be oversold.

Third, the prospect of return is considerably more complicated to achieve than was sold to BiH, its nationals and its protectors. The return project has failed to revive BiH, and new models of migration need to be examined, including the potential for greater circular migration and for delayed return migration, perhaps at the point when people are at retirement age.

The most positive conclusion from the Bosnian experience remains the management of the humanitarian effort during the war and the reception given to more than two million people who desperately needed protection. From the vantage point of host states, this demonstrates that temporary and large-scale humanitarian protection is possible. The history of humanitarian protection in BiH is especially relevant to the contemporary horrors of the conflict in Syria that has destroyed much of the country and caused the displacement of more than eight million people. While the European Union Member States remain in disagreement over the relocation of some 60,000 Syrian refugees, the Bosnian experience demonstrates that people can be effectively protected, resettled and integrated in Europe. Cooperation is possible. That must be one of the key messages from this tragedy.

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See Blitz B K (Ed) (2006) *War and Change in the Balkans: Nationalism, Conflict and Cooperation*, Cambridge University Press.

Inconsistency in asylum appeal adjudication

Nick Gill, Rebecca Rotter, Andrew Burridge, Melanie Griffiths and Jennifer Allsopp

New research findings indicate that factors such as the gender of the judge and of the appellant, and where the appellant lives, are influencing asylum appeal adjudication.

There is a widespread, and growing, expectation that no matter where a person seeks asylum, comparable procedures and consistent standards of fairness will be applied in assessing their claim under the Refugee Convention. While positive steps have certainly been taken to promote consistency at a broad structural level, the extent to which it is achieved in practice is still largely unclear.

Initial findings from a three-year study by researchers at the University of Exeter¹ examining asylum determination procedures in the UK has found that there are considerable differences between the hearing centres where asylum applicants' appeals are heard, and significant inconsistencies in the practice of judges who decide such appeals.

Asylum appeals

Asylum appeals in the UK are heard at one of 13 hearing centres scattered across the country. Our researchers visited nine of the centres, and carried out a quantitative survey of 240 hearings at three of these: Taylor House, a large and chaotic centre in the heart of London; Sheldon Court, a busy, medium-sized centre in the UK's second largest city, Birmingham; and Columbus House, a fairly quiet centre on the outskirts of Newport in south Wales. We spent months sitting at the back of court rooms, recording the moods, manners and dialogues of the actors present and whether certain procedures were adhered to in order to explore whether the asylum appeals process differs between and within hearing centres.

In the UK, claims for asylum are considered in the first instance by Home Office officials. Around 75% are refused, and applicants generally have a right of appeal against this decision. Each appeal is heard by an immigration judge, and generally involves the asylum-seeking appellant

and their legal representative (if they have one), a Home Office representative, and an interpreter (where required by the appellant). The hearing has a standard structure, beginning with an introduction from the judge, moving on to examination of the appellant and sometimes of witnesses by the legal representative and the Home Office representative, and culminating in summary submissions of legal arguments by both sides.

Under UK government policy, asylum seekers are entitled to accommodation and subsistence if they agree to be relocated away from London and the South East of England, the most densely populated part of the country. When they lodge an appeal, their hearing is allocated to their nearest hearing centre. In other words, asylum seekers generally have limited choice about where they live, and even less choice about where their appeal is heard.

Differences between hearing centres

We encountered striking differences between the hearing centres themselves in terms of accessibility, local resources, atmosphere and facilities. Some, such as Taylor House and Sheldon Court, are well connected by public transport but others are much more difficult to reach, which can pose barriers to witnesses, friends and family attending the hearing to support the appellant. Some appellants told us that they had to get up at dawn and scrape together the money for expensive peak-time train tickets in order to reach some of the hearing centres for the scheduled start time of 10am, with fatigue then compounding their pre-existing anxiety.

Most appellants require a consultation with their legal representatives immediately before their hearing; indeed, in most cases, the day of the hearing is the first time the appellant and their lawyer will meet. Some hearing centres are so busy, however, that

demand for consultation rooms outstrips supply, and appellants and their legal representatives have to conduct the pre-hearing consultation while sitting, standing or even squatting in noisy public waiting areas. At Harmondsworth, a hearing centre attached to a detention centre, there is only one consultation room – a suite with a prison-style glass barrier between the appellant and the visitor. Users report that the two parties must shout to hear each other – difficult for appellants with health problems or when discussing sensitive matters.

Another key difference between the hearing centres is the frequency with which appellants are able to obtain legal representation. Over the past decade the UK government has successively cut legal aid funding for immigration cases, resulting in ‘legal deserts’: areas where there are no legal aid immigration and asylum solicitors, or only a few suitably qualified and accredited lawyers.² Our research suggests that Columbus House in Newport is located in a ‘legal desert’: 25% of the appellants we observed there were unrepresented, compared with 13% at Sheldon Court in Birmingham and 6% at Taylor House in London.

Judges are advised to take an ‘enabling’ role with unrepresented appellants but in most of the cases we observed this did not achieve the aim of giving the appellant a fair chance. Although the judge often told the appellant that they would have the chance to give submissions, they did not explain what this meant, or suggest how submissions might be structured. As a result, appellants tended not to engage with the Home Office’s arguments against them but simply pleaded for the judge’s sympathy – a natural, but legally ineffective, tactic.

A final key difference between the hearing centres is the gender ratio of presiding judges. The percentage of hearings we observed headed by a female judge was 49% at Sheldon Court, 41% at Taylor House and 19% at Columbus House. This is particularly important in light of the correlation between the gender of the judge and the conduct of the hearing, as we show below.

Differences in adherence to procedures

During the hearings themselves, we examined 14 key procedures which, according to best practice guidelines,³ judges should ordinarily carry out to ensure fairness. Such procedures relate to transparency, communication and accommodating needs, and led us to ask questions such as: Does the judge introduce themselves and state their independence from the Home Office, so that the appellant is aware of the role of the Tribunal and the separation of judiciary and State? Does the judge check the correct pronunciation of names and inform the appellant that they can request a break, in order to accommodate the needs of vulnerable appellants in particular and as a sign of respect? Does the judge explain the purpose of the hearing and how it will proceed, so that the appellant understands what to expect and what is expected of them? Where an interpreter is present, does the judge instruct the appellant in how to use the interpreter, and check understanding between the two, to ensure successful communication? And does the judge explain to the appellant that they must say if they do not understand anything, so that the appellant knows that they can voice problems in the hearing and so that misunderstandings are less likely to go unnoticed?

Many of these procedures are particularly important in the context of asylum, as appellants are often vulnerable, unfamiliar with the UK legal system, and wary of authority due to experiences of persecution and injustice in their countries of origin. The procedures also have a social value, in ensuring that the appellant is treated with equality and respect, and is able to participate, and a utilitarian value in increasing the likelihood that the evidence, on which the appellant’s risk on return to the country of origin is assessed, will be properly adduced and reliable.

Troubling findings

Our analysis produced a number of troubling findings. The 14 procedures were carried out just over half (55%) of the time. In the case of some procedures, most of the judges behaved the same way. For example, in almost all

cases (98%), judges checked understanding between the appellant and the interpreter, and in a great number of cases (88%) they neglected to inform the appellant that they could request a break. However, there was more often significant disparity in following the procedures, with judges stating their independence in around a third of cases (35%), explaining that the appellant should say if they do not understand anything around half the time (53%), and explaining the purpose of the hearing (61%) and how it will proceed (66%) in about two-thirds of cases. It is when some judges follow the procedures and others do not that procedural inconsistency emerges.

An even more worrying finding is that the likelihood of these key procedures being followed is correlated with extraneous factors, such as the gender of the judge and appellant. Female judges were more likely than male judges to explain the purpose of the hearing and how it will proceed, to introduce themselves, to check that names are correctly pronounced and to make the appellant aware that they should say if they do not understand anything. Judges also more often explained the purpose of the hearing, introduced parties, and thoroughly checked understanding between the interpreter and the appellant when the appellant was male rather than female.

These findings have important implications. Inconsistencies in procedure undermine faith in the fairness of legal processes, and a reduced perception of fairness could result in further appeals, as appellants seek to challenge what feels like an unjust decision. The findings also raise questions about whether systems of legal determination which rely on multiple, geographically dispersed centres can be regarded as fair. Lack of adherence to procedures in particular could lead to erroneous decision making, with the grave consequence that asylum seekers may face forcible return, to face persecution or serious harm.

Addressing the issues

We advocate increased independent, external monitoring and assessment of practice

in hearings, as has occurred with much success for Home Office initial decision making. Simply observing and publicising judges' behaviour, as we have done, would also help. The geographical disparities we have highlighted could be addressed through greater communication between the hearing centres, such as via regular forums which bring together dispersed judges.

Although broader inequalities, such as legal aid cuts and their impacts, need to be tackled at a societal level, procedural consistency might be improved by the provision of clearer guidelines for judicial conduct in hearings, such as a checklist that summarises the key things that immigration judges should do. Furthermore, enhanced training could be delivered to judges, including by appellants themselves, using novel methods such as peer observation and judge/appellant role-play to provide experiential insights into best practice and the consequences of not following it.

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1. The research is funded by the Economic and Social Research Council, grant number ES/J023426/1.

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Sheltering displaced persons from sexual and gender-based violence

Julie Freccero

Providing a variety of safe shelter types, each with its own unique strengths and limitations, within a single area could help meet the diverse and changing needs of survivors of sexual and gender-based violence.

Men, women and children risk sexual and gender-based violence (SGBV) in situations of conflict and emergency and during the process of flight. Even once they are settled, in displacement camps or urban areas, their individual insecurity often increases, due to factors such as, for example, the breakdown of family and community ties, shifting gender roles, and limited access to resources, police protection and adequate housing.

The health and psychosocial needs of refugees and internally displaced persons (IDPs) fleeing SGBV can also be urgent and complex, resulting from the individual or collective harms they have suffered. Yet guidance on the provision of safe shelter to those fleeing SGBV is surprisingly limited. The Inter-Agency Standing Committee (IASC) Guidelines for Gender-Based Violence Interventions in Humanitarian Settings offer the most detailed guidance.¹ However, their brief discussion of safe shelter focuses only on camp settings, and lacks concrete examples of possible models and of ways to extend protection to marginalised groups.

To address this gap, in late 2011 the Sexual Violence Program of the Human Rights Center at the University of California, Berkeley, undertook the 'Safe Haven' study of safe shelters serving refugees, IDPs and other forced migrants in four countries: Colombia, Haiti, Kenya and Thailand.

The individual safe shelter programmes included in the study serve either adult survivors of SGBV or adults and children combined. They are run by government, international NGOs or local civil society organisations and vary widely in physical form, size and capacity. Some were designed specifically to serve refugees or IDPs, while others primarily served the

mainstream population but were open to serving displaced persons. In the course of the study, researchers developed a typology of safe shelter models serving refugees and other displaced persons:

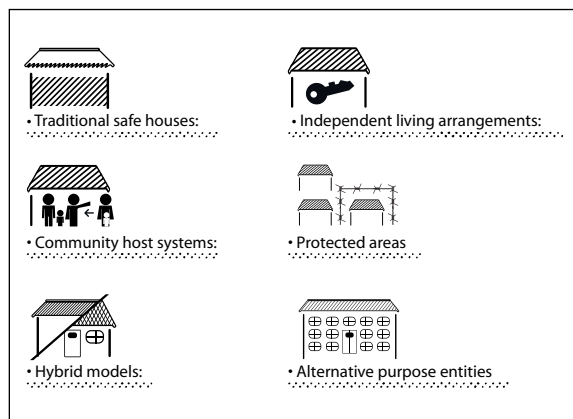
- **Traditional safe houses:** survivors live together in a common structure, with staff overseeing operation of the accommodation.
- **Independent living arrangements:** staff arrange for survivors to be housed in separate accommodations (e.g. independent flats or hotel rooms) that were not built specially for safe shelter purposes.
- **Community hosting arrangements:** survivors temporarily live in the homes of selected community members.
- **Protected areas:** survivors live in their own homes in a protected, enclosed subsection of a refugee or IDP camp.
- **Alternative purpose entities:** survivors stay in a setting designed to provide services unrelated to safe shelter (e.g. a police station, hospital clinic or church).

There were also hybrids that combine elements of the above models.²

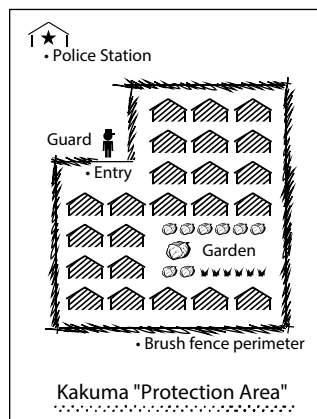
Traditional safe houses

The safe house was by far the most common. In general, traditional safe houses are beneficial to residents with greater security needs, offering measures such as guards, gates, confidential locations and rules governing residents' movement and visitors. However, this comes at the expense of community engagement, mobility and independence.

Extreme examples are the shelters for high-risk IDPs in Colombia fleeing conflict-



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Shelter Types Key: symbols representing each shelter type as defined in the Safe Haven study.

related violence. Residents of these shelters reported feeling locked in or imprisoned due to the rigid security protocols, police patrols and armed escorts accompanying survivors to outside services. Exceptions are the traditional safe houses run by grassroots women's and migrants' rights organisations in Thailand, which are often attached to a community centre offering resources, information and social activities. This variation of traditional safe house seems to strike an effective balance between security and resident empowerment.

Traditional safe houses also bring strangers to live in close proximity, which can result in conflicts related to cleanliness, shared resources, unequal power dynamics or pre-existing animosity towards members of other cultural and ethnic groups.

Independent living arrangements

These arrangements are useful in allowing more freedom and independence than other models. They also seem to provide more confidential or comfortable options for members of some marginalised groups who have specific needs or do not feel comfortable being housed with the general population. In Kenya, one programme houses LGBT³ refugees with protection concerns in low-profile private apartments around Nairobi, where they can live inconspicuously in the general community. However, they were safe only as long as they did not outwardly

identify as LGBT. Informants in Thailand noted that, given the gender norm that "men can protect themselves" and the stigma attached to men using safe shelters, an independent living arrangement model may be more accessible to and culturally appropriate for men and teenage boys.

The main limitation of independent living arrangements was the lack of any real security provision at housing sites. Scattered housing can also be isolating and unable to provide the social support that many find essential to recovery.

Community host arrangements

The community host system, in which survivors stay in the homes of volunteers, is an emerging protection strategy. These programmes offer survivors the comfort of a home setting and the ability to stay within their own communities, which can help them to maintain supportive relationships with friends and family and ease the reintegration process. It also fosters a network of survivor advocates within the community.

In Dadaab refugee camp in Kenya, two community host systems run by international NGOs temporarily place survivors in the homes of community leaders and volunteers. In a camp setting, this model allows for a community-based option that neither cuts people off from their normal support networks nor raises their expectations of long-term stays or resettlement.

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Community host systems are less resource-intensive and they also provide an option for those who may not want to take the extreme step of leaving the community, even temporarily. However, such systems may not be suitable for survivors with high security risks, particularly in a closed camp setting where it is not possible to move to another area secretly. Host families in Colombia expressed concerns about their own safety when housing people in volatile situations with minimal security, and some noted that it had a negative impact on their own family dynamics. In Kenya, survivors and volunteer hosts were occasionally attacked, and in other instances potential hosts simply refused to accept survivors because they feared for their own safety. These programmes also depend on a community's awareness of women's rights and approval of survivors seeking protection.

Protected areas

Protected areas are closed-off sections of a refugee camp with enhanced security, where at-risk individuals can live with their families in their own homes among other families in need of protection. In Kakuma refugee camp in Kenya, for example, the protected area is enclosed by a wire-mesh fence covered in thorny branches that shield residents from view. Two security guards work at the gate and a nearby police station enhances security.

However, this model posed challenges similar to those associated with traditional safe houses, including a focus on security at the expense of connection to the community and tensions resulting from strangers of diverse backgrounds living together in a congested space.

Alternative purpose entities

Alternative purpose entities can provide important protection options on a short-



Safe Haven shelter in Dadaab refugee camp in Kenya, 2011.

term, emergency basis, such as beds in health clinics in Kenya and Thailand, and housing at boarding schools in refugee camps in Kenya and Thailand. In Kenya, a community-run detention centre for offenders – known as The Sudanese Cell – doubles up as a safe space for survivors.

The primary limitation of alternative purpose entities is that they are simply not oriented to address the complex needs of survivors. In certain cases, they could provide temporary security but could not address medical or psychosocial needs. In other cases, the reverse was true. Findings suggest that these models should be used only as a short-term, last resort for sheltering survivors in emergency situations.

A diversity of options

This typology of safe shelter models can be useful in building an evidence base for more effective shelter protection and it can serve as a framework for analysing trends and understanding the strengths and limitations of different programme types. The study identified a number of critical factors for the success of safe shelter programmes, regardless of type. These include:

- how the community perceives the shelter
- the provision of adequate security and psychosocial support for both residents and staff

- a survivor-centred approach in which survivors are involved in all levels of decision making
- the development of transition strategies for residents to be able to move on as early as possible.
- a shelter's level of coordination with other shelters and other service providers in the area.

Having a diversity of safe shelter options available is ideal to accommodate the range of security needs as well as individuals' desire for independence and community connection. Understanding the diversity of possible programme models – and making this range available within a single camp or community – can enable survivors to transfer to more appropriate safe shelters as their needs and preferences evolve. More in-depth, rigorous evaluation of safe shelter programmes is

urgently needed to confirm which models work well in different circumstances.

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This article is based on findings of the Safe Haven study of the Human Rights Center. Julie Freccero was lead researcher and author for the Thailand case study and co-author of the four-country comparative report. The Safe Haven report series is available at <http://tinyurl.com/SafeHaven-BerkeleyLaw>

1. http://interagencystandingcommittee.org/system/files/legacy_files/tfgender_GBVGuidelines2005.pdf
These Guidelines are currently in the process of revision.
2. In the full reports of the Safe Haven series a sixth category of 'hybrid models' is also discussed.
3. Lesbian, gay, bisexual or transgender.

Changing how we measure success in resettlement

Justin S Lee, Suzie S Weng and Sarah Ivory

Refugees should be treated not as poor, traumatised foreigners but as strong and capable people who can be resources in their countries of resettlement.

While it is evident why resettlement countries are interested in the self-reliance of refugees, these are not necessarily the same benchmarks of success against which refugees measure themselves. By investing in understanding more about how refugees define their own success, we can improve our capacity to evaluate and adapt programmes intended to support refugees in their transition into permanent resettlement. Furthermore, by reframing our definition of what makes an outcome successful, we have the opportunity to build on the strengths of the refugees themselves, and to improve our capacity to demonstrate not just a reduction in the perceived burden on receiving communities but also the value that resettled refugees can add.

Nearly all of the 15 permanently resettled refugees interviewed on the subject of how individuals define their own success reported that they measure

success not by their individual economic self-sufficiency but by their ability to 'give back' to their communities and to maintain a connectedness to their culture of origin. Though this finding does not necessarily reflect the sentiments of all refugees, it does offer insight into important gaps between how receiving countries measure success (through employment statistics) versus how those receiving services in these countries measure success.

Supporting resilience

Resilience is often cited as the main determining characteristic for successful integration into a new community and, in that context, is often seen as a characteristic required of the individual alone. However, if resilience is "...the capacity of individuals to access resources that enhance their well-being and the capacity of their physical and social ecologies to make those resources

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available in meaningful ways...¹; it also requires a resettlement country to share the responsibility for the level of success that a refugee community achieves by ensuring that opportunities and resources exist which support long-term success.

For example, the United States (US), the world's largest resettlement country, evaluates programmes almost entirely based on a single outcome – rapid early employment. This can be effective in demonstrating financial self-sufficiency and elimination of public dependency; however, this alone does not guarantee that the foundation is set for resilience and long-term success. Imagine asking not just “what is the minimum qualification for success?” but instead, “how do refugees define their own success, and what impact does this have on our community?” Asking these questions might, for example, highlight instances in which stepping stones provided by receiving communities to achieve short-term success serve as stumbling blocks for longer-term positive results. For example, finding employment within the first three to four months in a new place might achieve immediate self-sufficiency but upon further investigation we might find that it limits refugees’ access to language training – training that might have far more added benefit in the long term for potential upward mobility in the job market.

Strengths-based perspective

Resettlement countries that are able to recognise the inherent assets and capabilities that refugees have developed through their own personal experience and who use this information to design programmes that bolster rather than restrict these talents will benefit most.

Although, at the level of bureaucratic systems, infusing policy with a person-centred strengths perspective is a daunting prospect, it is much less so at the practitioner level. At this level it is already happening but is not well supported or accounted for in the outcomes. One example is that of a young refugee who had come to the US as an unaccompanied refugee minor. His

caseworker recognised the young man's capacity for leadership and his passion for helping others in the programme; with her help, the young man started a support group for newly resettled unaccompanied minors. This blossomed into a valuable venue where young refugees could support one another, share practical knowledge, develop personal relationships and begin to heal their sense of community and belonging. In this instance, the resettlement agency was able to support an environment in which the refugee's strengths could be shared with his community in a meaningful way. Had the case worker focused only on that individual's deficits and trauma, this outcome would not have been possible.

Giving back

When host countries measure the success of resettlement only in terms of economic self-sufficiency, a great resource is being overlooked – the drive and dedication of resettled refugees to give back to their communities, countries and cultures of origin. Some of the resettled refugees volunteered with a resettlement agency, some sent money home to relatives still in refugee camps, and some started service and non-profit organisations that have an impact on thousands of displaced people globally. So important was the commitment to ‘giving back’ that they described it as a major motivating factor for gaining an education and achieving a high-paying job.

It is clear that newcomers who achieve their potential as measured against their own definitions of success have positive contributions to make in their resettlement communities and further afield. Effectively leveraging this potential, however, requires receiving countries to create environments in which resilience is nourished and strengths are recognised.

One thing that receiving countries can do to support this is to expand the benchmarks by which we measure success in the first place. New measurements that take into account a broader spectrum of successful integration would provide opportunities to demonstrate the positive impact of refugee

resettlement to the communities that receive them. This could in turn increase support and resources aimed at improving those outcomes and thus supporting programmes that improve the environments into which we receive refugees. Ultimately, this would create a positive feedback loop that would make resettlement programmes stronger and more sustainable over time.

1. Ungar M (2008) 'Resilience Across Cultures', *British Journal of Social Work*, Volume 38. <http://bjsw.oxfordjournals.org/content/38/2/218.full>

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Young Afghans facing return

Kim Robinson and Lucy Williams

A project in the UK aiming to prepare young men for return to Afghanistan through an assisted voluntary return programme was unsuccessful. A different, longer-term approach might have been more appropriate and more effective.

Unaccompanied children claiming asylum in the United Kingdom (UK) live in the precarious position of having to learn to adapt to their host country while knowing that they may eventually be returned to the country they have fled from. Local Authority Social Services departments are charged with their care under the Children Act 1989 but receive no funding once the children turn 18. At this stage, the young people's asylum claims are reviewed and in many cases they are deemed not to qualify for continued asylum. This article examines the case of six young people who, on reaching 18, were no longer eligible for care from Social Services and were identified as Appeal Rights Exhausted Care Leavers (ARECL) and thus subject to removal from the UK.

The Positive Futures Project was developed in recognition of the needs and vulnerabilities of young people facing the prospect of enforced return to Afghanistan. The basic aim of the project was to encourage these young Afghans to volunteer for Assisted Voluntary Return (AVR) by giving them some extra training and skills that would be useful once back in Afghanistan. However, the source of the Project's funding (the government's Return and Reintegration Fund) and its connection to the Home

Office meant that potential trainees were supposed to apply for AVR **before** they would be eligible for the training course.

AVR is one of a range of voluntary return schemes promoted by the UK government. AVR offers cash and support to ease the integration of migrants back into their countries of origin; such schemes are common but are controversial in that their 'voluntary' nature can be disputed in cases when migrants would prefer to stay but are obliged to return.

Existing evidence from our research and other studies of young Afghans presents a clear picture that young 'Care Leavers' do not want to return.¹ Many cannot imagine a future in Afghanistan and the continuing state of unrest in the country makes return an uncertain and frightening prospect. In addition, many young people have lost contact with family members and friends. Legal challenges to forced return are sometimes successful and, as of April 2015, the legality of charter flights taking Afghans back to Afghanistan is under challenge in the UK courts.

"They said we must sign and go back..."
The Project did not succeed in persuading any of this group of young people to apply

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for AVR. What was offered to them – training and the highest level of financial reintegration support available – did not outweigh their fears and concerns. A session with the Choices team, the NGO responsible for explaining AVR in the UK, was only scheduled at the end of the first week – when it became clear that the young people had not fully understood that they must commit to return to Afghanistan in order to receive the training. They all left the programme, angry and disappointed at how things had turned out. We were told:

"We were thinking we can go to college, we can do anything, we can learn – but then they said we must sign and go back. I know that, I've been in detention ... they can give some money and you can go back to Afghanistan to live there. What am I going to do with that money if I haven't got family? If I go somewhere and people see I've got money, they will steal it from me. They might kill me as well. It's not right."

Unaccompanied asylum-seeking children need improved care, support and educational opportunities to help them prepare better for adulthood and to reduce the possibility of detention, destitution and deportation. More broadly, the study highlighted a complex area of immigration policy which, we argue, could be improved if local authorities' obligations as 'corporate parent' focused more on the needs and futures of the young person than on wider political issues.

Recommendations

Our recommendations challenge the culture of increasingly punitive migration controls and argue that public spending on these children could prevent longer-term problems for their well-being, political engagement and settlement.

AVR and incentivising return: There needs to be discussion early on in the establishment of care for young people in relation to preparation for potential return, particularly in terms of accessing education for future careers and business opportunities.

Comprehensive training: With a longer-term view, training could be incorporated while

they are still in care as minors. This could be jointly funded, through both the care and the training budgets, enabling support staff to work more closely with young people to overcome barriers such as finding suitable school places and access to continuing education.

A cultural approach: Encouraging a sense of belonging – either in Afghanistan or the UK – and bi-culturalism would help them to think positively about returning to Afghanistan. This could include literacy and age-appropriate fluency in their language of origin and building connections and social networks in Afghanistan. Family-tracing services could also be used more proactively to develop the few links these young people may have.

Furthermore, the funding for Care Leavers who are classified as Appeal Rights Exhausted (and therefore eligible to be deported) remains contentious. Local Authorities are financially responsible for providing care while the Home Office's role is that of an enforcement agent. The resulting tension over financial liability needs to be resolved if more holistic approaches to the care and support of these young people are to be feasible. Equipping a young person with cultural skills appropriate to a future in the UK as well as in their country of origin has the potential to support them in building positive futures as contributing citizens wherever their lives take them.

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1. See for example Gladwell C (2013) 'No longer a child: from the UK to Afghanistan', *Forced Migration Review* issue 44 www.fmreview.org/detention/gladwell; Schuster L and Majidi N (2014) 'Deportation Stigma and Re-migration', *Journal of Ethnic and Migration Studies*, Vol 41 (4).
<http://tinyurl.com/JEMS-2014-Schuster-Majidi>

A fragmented landscape of protection

Roger Zetter

Changing concepts of protection and a growing diversity in the practice of protection, and in the range of humanitarian and other actors doing protection work, have led to a fragmentation of effective protection for forced migrants.

Over the last decade, in response to the changing dynamics and increasing complexity and unpredictability of forced and irregular migration, there has been a significant remaking of the concept of protection, a diversification of the practice of protection and an expansion in the range of humanitarian and other actors doing protection work. In principle, at least, these developments have the potential to reduce the risks to which forced migrants are exposed and their vulnerability to those risks, and to allow people to flee conflict, violence and human rights abuses in security.

However, this has led to a fragmented landscape of protection which is conceptually problematic, and which has divergent standards, procedures and governance. The result has been increasing vulnerability of forced migrants and a protection regime that lacks coherence and fairness.

Remaking protection – changing norms and practice

Some progress has been made in developing norms of protection. At the 2005 United Nations (UN) World Summit, the doctrine of the Responsibility to Protect (R2P) was adopted,¹ a far-reaching attempt to protect people exposed to the extreme human rights abuses that lead to forced displacement; however, the international community has stopped short of giving it any teeth and R2P lies fallow. With norms endeavouring to keep pace with the changing dynamics of forced displacement, especially for those who do not fall within the provisions of the 1951 Refugee Convention, we have seen adaptations such as subsidiary forms of protection – ‘humanitarian protection’, ‘complementary protection’ and ‘temporary protection’. And a recent report from the Office of the High Commissioner for

Human Rights advocates and refines the norms of protection which should be provided at borders and entry points.²

Whereas this normative development of protection has been rather limited, practice has developed and diversified both rapidly and extensively. While the International Committee of the Red Cross (ICRC) continues to lead the development of Protection Standards, a wide range of non-governmental, intergovernmental and UN humanitarian organisations have developed strategies for emergency humanitarian evacuation and basic civilian protection in war zones. Self-protection is widely advocated by a number of NGOs. The Global Protection Cluster



Syrian refugees are rescued in the Mediterranean Sea by crew of the Italian ship, Grecale. March 2014.

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has played an important role in setting and disseminating protection standards and policies and in capacity building. For urban areas, protection tools and instruments are being refined. Within Europe the 2013 Common European Asylum System (CEAS), although heavily criticised, is a wide-ranging instrument seeking to ensure consistent protection standards and performance in all European member states.

The normative protection gap for third-country nationals indirectly caught up in conflict countries – so-called stranded migrants such as the 800,000 migrant workers and migrants in transit in Libya in 2010 – has been pragmatically filled by joint International Organization for Migration-UN High Commissioner for Refugees action. The European Commission has adopted Regional Development and Protection Programmes, a potentially valuable instrument adding to the quality and reliability of protection for forced migrants in regions of origin.

Given this expanding portfolio of protection standards and practice, it may seem that progress has been made but this is primarily for refugees, not the wider categories of migrants who are forcibly displaced but who do not meet the normative definition of a refugee. Thus there are significant conceptual and operational questions which suggest that protection space and the quality of protection (discussed below) have diminished, and that international norms and standards have been sacrificed to operational and political imperatives, creating a fragmented landscape of protection.

From protection norms to protection management

Alongside the ‘soft-law’ normative initiatives mentioned above, there is now a much sharper focus on the policies and operational instruments for protection. This reflects and reinforces a profound transformation in the underlying rationale and practice of protection. This is the transformation from norms-based principles to the ‘management’ of protection, linked to a reconfiguration of institutional structures and responsibilities. One example is within the European Union (EU), where the Global Approach to Migration and Mobility (GAMM – the EU’s principal strategic policy) and the CEAS reveal the way the management of protection has displaced the search for normative conditions of protection that might address the new dynamics of international migration.

In other words, protection has been appropriated by international agencies and humanitarian actors as an institutionalised and operational task. The consequent loss of the normative supremacy of protection is potentially one of the most critical outcomes of the way in which the protection challenges posed by the contemporary dynamics of forced migration have been addressed.

Conceptual diversity and uncertainty

There is increasing debate, but little consensus, as to whether protection should continue to be ‘status-based’ or whether ‘needs-based’ or ‘rights-based’ protection



might better address the diverse range of vulnerabilities and risks which forced migrants face. **Status-based** determination – contingent on international legal and normative frameworks such as the 1951 Convention which designates certain categories of forced migrant and as laid out in the 1998 Guiding Principles on Internal Displacement – has dominated both the protection discourse and operational considerations. But the disaggregation of protection challenges into constituent statuses does not accurately address contemporary protection needs.

By contrast, some humanitarian actors, for example the ICRC, contend that there is a demand for protection from a wide range of threats – such as direct physical violence, coercion and exploitation and deliberate deprivation – irrespective of the category or normative status of the individual. Indeed, with violent conflict and forced migration taking on new manifestations, these agencies argue that protection should be predicated on a **needs-based** approach which responds to these vulnerabilities, and not on a specific legal status. Another line of argument, promoted by some humanitarian NGOs and the International Federation of Red Cross and Red Crescent Societies, proposes a **rights-based** approach for recognising and determining the protection entitlements of forced migrants. In other words, the right to protection, like many other rights, is an entitlement that belongs to all human beings and most certainly to forcibly displaced people. It is not contingent on a particular legal (or social or political) status.

Irrespective of the basis for protection, all three approaches point to the need for a framework that is as inclusive as possible but this aspiration, as yet, remains fragmented.

Structural ambiguity of protection

There is a distinct and growing dichotomy between the concepts and practice of protection in regions of mass forced displacement in the Global South, compared to the Global North where regimes that simply do not allow in refugees, asylum seekers and other forced migrants are

becoming increasingly embedded. From a single starting point of international legal and normative standards set out in international law, a twin-track protection model has now emerged. Within regions that generate most of the world's forced migrants, improved standards and expanded protection capacity are promoted by external, usually Global North, actors. These same post-industrial countries are simultaneously giving diminished access to fair asylum procedures and showing a progressively reduced commitment to refugee resettlement.

Nowhere is this dichotomy more evident than in the regime of the EU. The EU has enabled extra-territorial processing of migrants and asylum seekers through its Mobility Partnerships and Readmission Agreements with neighbouring and transit countries, a process known as 'rebordering'. Meanwhile, closer to Europe itself, a battery of instruments and interventions, mainly in southern Member States and the Mediterranean, has been created to enhance security of the common external border – Frontex, EUROSUR, EASO³ and The Task Force for the Mediterranean. Constructed to manage the security of Europe and to meet the challenge of mixed migration flows, this process has relentlessly diminished the quality of protection for forced migrants.

This twin-track approach to protection is further evidence of the fragmented landscape.

Fragmented practice and institutional delivery

The proliferating protection practices noted above lack a coherent, systematic framework or over-arching normative architecture of support. Instead, an extensive array of policies, instruments and operational responses has been created which are largely reactive and often pragmatically tailored to specific protection contexts and protection gaps.

Even where coherence and convergence is the aim, as with the CEAS, there is still vast policy and operational divergence, as a recent Eurostat report noted.⁴ There is divergence in procedures (reception, admission, status determination, nationality and age

verification tests, appeals and removals) and divergence in standards and practices (for example, access to legal advice, detention, deportation and temporary protection).

This lack of coherent practice is paralleled by the lack of a comprehensive institutional response to protection. Many of the initiatives have been developed by international agencies, governments, the EU or humanitarian NGOs on an individual basis to meet their specific institutional goals, programming strategies or political priorities. What is significant here is that whilst the international duty to protect rests with a very small number of agencies such as UNHCR and the ICRC, many humanitarian organisations, notably NGOs, now include protection in their response to forced migration almost as if they have a mandate to do so. Many humanitarian organisations now have specialised protection staff and well-developed policies and strategies on protection. It could be argued that this plurality of protection better tailors protection activity to particular situations and needs, and to the capacity of the actor.

However the impact of this proliferation of protection has been to reinforce the disaggregated response to contemporary protection challenges and thus the fragmentation of the normative basis of protection.

The politicisation of protection

Finally, the most disturbing evidence of the fragmentation of protection is the highly politicised milieu within which protection is now located, far removed from the normative precepts on which it was originally based. Protection has, in effect, been co-opted and instrumentalised to serve national interests and a political discourse which reinforces the securitisation of migration and asylum (predominantly in post-industrial countries) at the expense of the rights and protection of migrants. The fact that protection now lies at the cross-over of human rights, legal and normative precepts, and politics is potentially the most disturbing evidence for the fragmented landscape of protection.

Nowhere are the issues of rebordering and the protection for forced migrants so highly politicised in public discourse as in Europe in relation to international migration, mixed migration, mobility between European countries, and asylum seekers and refugees. National elections, elections to the European Parliament in 2014, and rising xenophobia all provide ample evidence of this. Only Australia rivals the EU in the fragmentation of protection brought about by contemporary political discourse.

Conclusion

Instead of enhanced protection, this fragmented landscape has resulted in a protection regime that lacks coherence and fairness and in a growing protection crisis, especially at Europe's borders. As a consequence, forced migrants are increasingly vulnerable and their dignity and rights are less and less respected.

How to develop and adapt protection norms and practices that respond to profoundly different patterns and dynamics of population displacement in the contemporary world, compared with the situation when the normative principles and international frameworks were originally established, is the challenge that remains.

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This article draws on the analysis of a recent study for the Swiss Federal Commission on Migration.⁵

1. www.who.int/hiv/universalaccess2010/worldsummit.pdf
2. OHCHR (2014) *OHCHR Recommended Principles and Guidelines on Human Rights at International Borders*. www.ohchr.org/Documents/Issues/Migration/A-69-CRP-1_en.pdf
3. Frontex: European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union; EUROSUR: European External Border Surveillance System; EASO: European Asylum Support Office.
4. Eurostat (2014) *Asylum Statistics*. http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Asylum_statistics
5. Zetter R (2014) *Protecting Forced Migrants – A State of the Art Report of Concepts, Challenges and Ways Forward* www.ekm.admin.ch/ekm/fr/home/aktuell/news/2014/2014-12-18.html

Annual Harrell-Bond Lecture

Oxford: 4th November 2015, 5pm

"We do not want to become refugees" – Human mobility in the age of climate change

Professor Walter Kälin (Envoy of the Chairmanship of the Nansen Initiative, and Professor of Constitutional and International Law, University of Bern) will give the 2015 Annual Harrell-Bond lecture. Disaster displacement is one of the big humanitarian challenges of our times and is likely to increase significantly in the context of climate change. Building on the work of the Nansen Initiative on disaster-induced cross-border displacement, the lecture will explore different tools available to address displacement and other forms of disaster-related human mobility.

Location: Oxford University Museum of Natural History, Oxford OX1 3PW.

Email anneli.chambliss@qeh.ox.ac.uk to reserve a place. For more details, visit www.rsc.ox.ac.uk/events/2015-annual-harrell-bond-lecture.

New appointments at the RSC

Dr Will Jones has been appointed Departmental Lecturer in Politics and Forced Migration for one year (as sabbatical cover for Professor Matthew Gibney). He will continue to work with Alexander Betts on the political life of refugees in Africa, including their forthcoming book *The Animators: How Diasporas Mobilise to Contest Authoritarianism* (Cambridge University Press).

Georgia Cole has been appointed as the new Joyce Pearce Junior Research Fellow (in association with Lady Margaret Hall). Her appointment is for three years. She will be continuing her research on the politics of refugee cessation in relation to Rwandan and Eritrean refugees, as well as beginning a new project on the 'value of refugee status'.

Dr Leïla Vignal will be joining the RSC for two years on a Marie Curie Fellowship. As a geographer, she will be working on a number of projects relating to mapping the response to the Syrian refugee crisis, both in the region and in Europe.

Recent publications

www.rsc.ox.ac.uk/publications

Refugee Innovation: Humanitarian innovation that starts with communities

Alexander Betts, Louise Bloom, Nina Weaver (July 2015)

'A critical approach to the production of academic knowledge on refugee integration in the global North', *RSC Working Paper Series*, 109 Christina Kovacs (June 2015)

Departure of Dr Kirsten McConnachie

After three years at the RSC as the Joyce Pearce Junior Research Fellow, Dr Kirsten McConnachie has taken up a position in the University of Warwick's School of Law.

During her time at the RSC, Dr McConnachie worked primarily on a comparative study of security and self-governance strategies among refugees from Myanmar in Southeast Asia. In 2015 she was jointly awarded the 2015 Socio-Legal Studies Association Early Career Book Prize for her book *Governing Refugees: Justice, Order and Legal Pluralism* (Routledge, 2014), which examines themes of community governance, order maintenance and legal pluralism in the context of refugee camps on the Thailand-Burma border. More recently, Dr McConnachie has been writing about Southeast Asia's migrant boat crisis, highlighting the need for ASEAN and global involvement in resolving Rohingya statelessness and the discrimination against them. See (May 2015) <https://theconversation.com/south-east-asias-migrant-boat-crisis-is-a-global-responsibility-41698>.

Professor Dawn Chatty elected Fellow of the British Academy

We are delighted to announce that Dawn Chatty, Professor of Anthropology and Forced Migration and former Director of the Refugee Studies Centre, has been elected a Fellow of the British Academy. Professor Chatty is among 42 highly distinguished UK academics from 18 universities elected as Fellows in 2015 in recognition of their outstanding research.



Professor Chatty is a social anthropologist whose ethnographic interests lie in the Middle East, particularly with nomadic pastoral tribes and refugee young people.

FMR Podcasts

All the articles in this issue are available as podcasts on the FMR website and also on iTunesU. Click on the icon to view FMR podcasts, or visit <http://tinyurl.com/iTunesU-FMR>.



September 2015

www.fmreview.org/dayton20**'Destination: Europe'**

The December issue of FMR will focus on 'Destination: Europe'. The plight of migrants and refugees on the Mediterranean Sea has made frequent headline news, triggering impassioned debate among Europe's citizens as well as its politicians. Meanwhile, growing numbers are travelling to Europe by overland routes through the Balkans, triggering different challenges and protection concerns. This issue will discuss the complexities of the European asylum debate and

place it in its broader context. For more details, see www.fmreview.org/destination-europe.

'While Europe squabbles, people die'

Professor Alexander Betts, Director of the RSC, has been interviewed recently on a number of occasions about the current Mediterranean/Europe refugee and migrant 'crisis'. Listen, for example, to an interview with the BBC World Service: www.rsc.ox.ac.uk/news/2018while-europe-squabbles-people-die2019-alexander-betts.



UNHCR / A Rodriguez

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Still worth reading...

Articles on post-Dayton Bosnia and Herzegovina previously published in FMR



April 1998, FMR 1

www.fmreview.org/Internal-displacement

Bosnia and Herzegovina: problems and progress in the return process

Carl Hallergård

While the return of people displaced by the 1992-95 war is an explicit objective of the international community, only 15% have so far returned to their places of origin.

Managing the return of refugees to Bosnia and Herzegovina

Richard Jacquot

In the early stage of the war, European nations reluctantly agreed to provide refuge to those displaced by the war but warned that the refugees would have to return as soon as the war ended. Return, however, would be difficult for several reasons.



April 2000, FMR 7

www.fmreview.org/land-and-property-issues

At the heart of the return process: solving property issues in Bosnia and Herzegovina

Catherine Phuong

The Dayton Peace Agreement explicitly put property issues at the heart of the return process and the overall peace framework for Bosnia and Herzegovina.

The rehabilitation of homes and return of minorities to Republika Srpska

Guy Hovey

The return of IDPs from minority communities generates many lessons and raises policy questions.



October 2001, FMR 11

www.fmreview.org/return-to-peace

Problems or partners? Working with women to rebuild the Balkans

Rachel Wareham and Diana Quick

Why have post-war reconstruction initiatives treated women as passive recipients of aid rather than as active partners?

Bosnia and Herzegovina – no future without reconciliation

Walpurga Englbrecht

The three phases of reconciliation are not yet completed in Bosnia: reconciliation is impossible until the truth is known.

Discontent with assistance to the Bosnian return process

Guy Hovey

How sustainable are minority returns? What do the displaced themselves think of the return process and the programmes designed to facilitate return?

September 2004, FMR 21

www.fmreview.org/return-reintegration

Restitution of land and property rights

Anne Davies

Without property restitution, perceptions of injustice are perpetuated and underlying conflicts remain unresolved.

Post-conflict property restitution in Croatia and Bosnia and Herzegovina: legal rationale and practical implementation

Rhodri Williams

A human-rights based approach to post-conflict property restitution is likely to produce results that are more consistent, fair, effective and sustainable than those based purely on the 'right to return'.

September 2004, FMR Supplement

www.fmreview.org/house

Housing reconstruction in Bosnia: field realities

Ana Povrzenic

Housing reconstruction is not just a question of building houses. It is about return and restoring the right to return to all those who lose this right during conflict.

September 2009, FMR 33

www.fmreview.org/protracted

Unfinished business: UNHCR and IDPs in Bosnia and Herzegovina

Erin Mooney and Naveed Hussain

Fourteen years after the war's end, renewed national and international efforts are needed to complete the work of securing durable solutions for IDPs.

Local integration for refugees in Serbia

Miloš Teržan and Dejan Kladarin

By paying particular attention to the promotion of livelihoods and self-reliance, UNHCR hopes to be able to phase out the long-standing assistance programme.

When 'temporary' lasts too long

Erin Mooney

Though intended as temporary places of shelter, collective centres often become a place where IDPs or refugees stay for years, even decades.



www.fmreview.org/dayton20